



## Fact Sheet - Adoption Visas (Subclass 102) - Health Requirement

This fact sheet provides information for prospective adoptive parents applying for an Adoption (subclass 102) visa for their child, where the adoption has been approved by the relevant State or Territory adoption authority. It is intended to be read in conjunction with Fact Sheet 36 *Adopting Children from Overseas* which is available on the Department of Immigration and Citizenship (DIAC) website.

**See:** <http://www.immi.gov.au/media/fact-sheets/36adopting.htm>.

There are certain eligibility criteria that must be met before an Adoption (subclass 102) visa will be issued. These are based on requirements set out in the *Migration Regulations 1994* and include criteria in relation to an applicant's (the child's) health. This fact sheet provides an overview of the requirements and process for satisfying the health requirement of the Adoption visa.

The role of DIAC is to assess and decide applications for visas in accordance with the requirements of the *Migration Regulations 1994*. Processing medical assessments for all adoption cases are treated as a priority.

There is no provision to grant a visa to a child who does not meet the requirements of the *Migration Regulations 1994*, even if the adoption has already occurred and is lawful in the country of adoption.

### Health Requirement

The Health Requirement is outlined in *Public Interest Criteria 4007* (PIC 4007) which applies to Adoption (subclass 102) visas. PIC 4007 is set out in Schedule 4 of the *Migration Regulations 1994*. The purpose of the health requirement is to:

- protect the Australian community from public health risks, specifically active tuberculosis
- contain public expenditure on health care and community services
- safeguard Australian residents' access to health care and community services that are in short supply (such as dialysis and organ transplants).

### Adoption visa health tests

Applicants for Adoption (subclass 102) visas (ie the child) will be required to undergo:

- a medical examination (Form 26)
- a chest x-ray (if 11 years of age or older) (Form 160)
- an HIV/AIDS test, and
- Hepatitis B test, as well as any additional tests requested by a Medical Officer of the Commonwealth (MOC).

## **Tuberculosis (TB)**

Tuberculosis is prescribed as a public health risk in the *Migration Regulations 1994* and the purpose of these tests is to determine whether there is any evidence of either active or previous TB.

Where there is possible evidence of TB, the applicant will be asked to undergo more specific tests. If active TB is found, Australian migration law does not allow a visa to be granted. A person can be treated for and cured of TB which normally takes 6–9 months. If there is evidence of inactive TB, the applicant may be asked to sign a health undertaking in order to meet the health requirement. A MOC will make this assessment.

## **HIV/AIDS**

Adoption visa applicants must take an HIV/AIDS test. If the applicant is found to be HIV positive, a decision on whether the applicant meets the health requirement will be made on the same grounds as any other pre-existing medical condition. The main factor to be taken into account is whether the applicant's condition is likely to result in significant costs to the Australian community in terms of health care and community services. A MOC will make this assessment.

## **Health Undertaking (Form 815)**

The purpose of Form 815 *Health Undertaking* is to ensure that after arrival in Australia, the applicant undertakes a follow-up medical examination to assess and monitor any potential health problems. The MOC is responsible for determining whether a health undertaking is required. Given the ages of applicants for Adoption (subclass 102) visas, the undertaking is completed by the sponsor (prospective adoptive parent).

## **Panel Doctors and Medical Officers of the Commonwealth**

Applicants applying for an Adoption visa are required to undertake the above medical examinations with overseas panel doctors or panel radiologists who are appointed by DIAC.

In most cases, the child's medical results will be referred to the Health Operations Centre in Australia, where a MOC will provide a medical opinion on whether the applicant meets the Health Requirement.

MOCs are doctors who are appointed by the Minister for Immigration and Citizenship under Australian migration law.

In making an assessment, a MOC is required by legislation to take into account the potential health care costs and community services likely to be required by a hypothetical person with a condition of the same level and form as the applicant. This includes the need for medical, pharmaceutical and community services, including assisted accommodation, home and community care, income support such as Special Benefit, Disability Support Pension and Carer's Pension and special educational needs.

The Migration Regulations also require MOCs to assume that applicants granted a visa to enter Australia will utilise fully all entitlements to public health care and community services.

A list of available panel doctors is available on the DIAC website.

See: <http://www.immi.gov.au/contacts/panel-doctors/>

## **What happens if an applicant does not meet the Health Requirement?**

If an applicant for a subclass 102 adoption visa does not meet the Health Requirement, a departmental officer at the relevant Australian Embassy will consider whether to exercise a health waiver as set out in *Public Interest Criteria 4007* (PIC 4007).

PIC 4007 provides that a waiver of the Health Requirement is available where a delegate determines that the estimated costs and prejudice to access levels are 'not undue'. The MOC will provide a cost estimate for their particular circumstances and determine the level of prejudice to access. This cost estimate is based on a hypothetical person with the applicant's condition.

The applicant and/or sponsor will be given an opportunity to put forward reasons to support a health waiver and this information will be considered.

Consideration of a health waiver involves assessing all information to decide if the potential health care and community service costs or prejudice of access levels are undue. Each decision is made on a case by case basis and must take into account levels of care required, cost and prejudice to access.

When considering whether to exercise the health waiver, the departmental officer will take into account a range of factors including the ability of the applicant and or sponsor to mitigate costs and care, as well as any compassionate and compelling circumstances. For example:

- the level of care required and how this might be met
- the level of cost and how this might be mitigated by the sponsor and/or the applicant
- any compassionate or compelling circumstances
- any links to Australia such as family
- the effects of a decision not to exercise the health waiver including on any existing Australian citizen or other family relationships (for example an Australian sibling).

All the relevant factors are then considered by the departmental officer to determine whether a health waiver is exercised in that particular circumstance.

**Important note:** The only condition that cannot be waived is active TB or any condition that is a public health threat. TB is currently the only prescribed public health risk for migration purposes as advised by the Department of Health and Ageing, and the only one prescribed in the *Migration Regulations 1994*.

## **Further information**

Some general information about health requirements and the health waiver is available in Fact Sheet 22 which is available on the DIAC website.

See: <http://www.immi.gov.au/media/fact-sheets/22health.htm>