



## Fact Sheet - Expatriate Adoption

Expatriate adoption occurs when an Australian living abroad adopts a child from the country in which he or she is resident. Expatriate adoption can also include third country adoption, where an Australian living abroad in country B, adopts a child from country C. In both instances, the adoption must comply with the domestic adoption laws of the child's overseas country of usual residence and must be finalised in that country.

**Note:** Depending on the law and adoption process of the countries involved, such adoptions may or may not be able to meet Australian migration law or family law requirements – see the information below under 'Caution'.

Australian Commonwealth, state and territory adoption authorities are not responsible for expatriate adoptions, and do not assess or approve applications for such adoptions.

Children adopted by Australian citizens or permanent residents via expatriate adoption arrangements are not automatically entitled to visas for entry to Australia. Any expatriate adoption must meet Australian immigration requirements in addition to being a lawful adoption in the overseas country.

**Note:** For some third country adoptions the immigration requirements outlined below may be different if the adoption was arranged between two Hague Convention countries (other than Australia).

### Immigration Requirements for Expatriate Adoption

The Department of Immigration and Citizenship (DIAC) is responsible for issues relating to immigration, visas and citizenship in Australia. DIAC cannot help with adoption arrangements, its role is to assess and determine applications for visas in accordance with the requirements of the *Migration Regulations 1994*.

Children adopted through the states and territories under Australia's intercountry adoption arrangements will usually enter Australia under the Adoption (Subclass 102) visa category. For a child adopted by Australian residents to be eligible for this type of visa they must meet a number of requirements, including that the applicants have completed the required training and assessment and the adoption has the approval of a state or territory adoption authority.



Because expatriate adoptions occur without the involvement of state and territory adoption authorities, the only circumstance where a visa may be granted by DIAC under such an arrangement is where the adoptive parents have been living overseas for more than 12 months at the time of the migration application. The adoptive parent must show that:

- their residence overseas was not contrived to deliberately bypass any requirements concerning the entry of adopted children into Australia, and
- they have lawfully acquired full and permanent parental rights by the child's adoption. This means that the adoption order must sever the legal relationship between the child and his/her biological parents.

**Note:** Full and permanent adoption does not exist in the laws of some countries.

## Caution

There are inherent risks involved for both the child and the adoptive parents in expatriate adoption as the adoption is arranged without any of the safeguards that exist in the programs managed by the Australian Commonwealth, State and Territory Central Authorities responsible for adoption matters. The Australian Government's involvement in expatriate adoptions is limited to determining whether or not the child meets immigration requirements in order to enter and remain in Australia. This decision can only occur after the adoption order is made in the overseas country.

You need to ensure the adoption meets the requirements of the Migration Regulations as there is no provision to grant a visa to a child who does not meet these requirements, even if the adoption has already occurred and is lawful in the overseas country. If a visa is not granted, the adoptive parents will have established a legal parent-child relationship in the overseas country without the child being able to enter and reside permanently in Australia.

Before you proceed with an expatriate adoption, it is recommended that you seek independent legal advice both in Australia and in the child's overseas country of usual residence.