# Law And Procedure In Intercountry Adoptions By California Residents*

## I. INTRODUCTION

### A. DEVELOPMENT OF INTERCOUNTRY ADOPTION: CONFLICTING CONCERNS

Intercountry adoption developed as a response to a humanitarian interest in the many children who were abandoned or orphaned as a result of wars in Europe and Asia.[1] To meet this need Congress enacted four temporary legislative programs between 1948 and 1958.[2] Each of these was a special legislative act that provided for the issuance of a set number of nonquota immigrant visas to eligible orphans.[3] In addition, when it became clear that a number of orphans who had been or were to be adopted would not gain admission since the stated number of nonquota visas authorized by the 1956 Act had already been issued, the Immigration and Naturalization Service authorized their admission under emergency parole[4]

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[1] A. KUDUSHIN, CHILD WELFARE SERVICES 558 (2d Ed. 1974).

[2] Displaced Persons Act of 1948, ch. 647, 62 Stat. 1009. Act of July 29, 1953, ch. 268, 67 Stat. 229. Refugee Relief Act of August 7, 1953, ch. 336, 67 Stat. 400. Act of September 11, 1957, Pub. L. 85-316, 71 Stat. 639.

[3] The Displaced Persons Act of 1948 authorized 10,000 nonquota visas of which 4,065 were used; the Act of July 29, 1953 authorized 500 nonquota visas, 466 were used; the Refugee Relief Act of August 7, 1953 authorized 4,000 special visas, 3,761 orphans used them to enter the United States; and the Act of September 11, 1957 allowed an unlimited number of special visas to be issued to children of countries with oversubscribed quotas, 9,620 orphans entered during the Act's existence. *See* Krichtsky, *Alien Orphans*, 9 I & N REPORTER, 43, 44 (April, 1961) and Kramer, *Some Amendments to the Basic Immigration Law*, 11 I & N REPORTER 19 (October, 1962).

[4] The Attorney General may at his discretion temporarily parole aliens into the United States for emergency reasons or for reasons deemed strictly in the public interest. 8 U.S.C. § 1182(d)(5) (1970).

procedures.[5]

The Acts of 1953 and 1957 authorized the issuance of nonquota immigrant visas to children adopted abroad by proxy.[6] Proxy adoptions were the instrument by which thousands of children found homes in the United States.[7] Unfortunately this process was subject to the abuse of black market selling of children and unsatisfactory child placements due to the lack of supervision.[8]

By 1961 the immediate pressures of the postwar upheaval had been alleviated and the abuses of the intercountry adoption process, particularly adoptions by proxy, became more noticeable. Thus the additional concern of placing each child in a good and stable home environment became more important. Congress responded by enacting what is in essence the present "eligible orphan" legislation.[9] The 1961 Act virtually did away with proxy adoptions and established requirements for state and federal investigation and supervision of adoptions.

The introduction to the California Department of Health's intercountry adoption manual reflects this changing focus:

> The general philosophy of the intercountry adoption program has gradually changed from that involving an emergent need to alleviate the critical situation of thousands of children who became refugees because of wars and catastrophes beyond their nation's capacity to cope, to one involving a general awareness and concern for children of the world who find themselves without homes for a variety of reasons and without any possibility of being adopted into a family of his own in his own country.[10]

The focus of this article is to analyze and describe the use of the intercountry adoption process by California residents. The structure of the article is as follows: Section Two will analyze the typical

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[5]Krichtsky, *Immigrant Orphans*, 7 I & N REPORTER 19 (October, 1958). The Immigration and Naturalization Service acted in consultation with Congressional committees and the Department of State and authorized the parole in accordance with procedures in 8 U.S.C. § 1182(d)(5) (1970).

[6]Krichtsky, *Immigrant Orphans*, 7 I & N REPORTER 19, 20 (October, 1958) and Krichtsky, *Alien Orphans*, 9 I & N REPORTER 43 (April, 1961). Proxy adoptions occurred when the adoptive parents did not go abroad, but instead had another party act as their proxy to adopt in the country of the child's residence.

[7]Adams and Kim, *A Fresh Look at Intercountry Adoptions*, CHILDREN 216 (Nov.-Dec., 1971); Krichtsky, *Alien Orphans*, 9 I & N REPORTER 43, 46 (April, 1961).

[8]Note, *Legislation-Foreign Adoptions*, 28 BROOKLYN L. REV. 324 (1962). *See also* H.R. REP. No. 1086, 87th Cong., 1st Sess. 5, 7 (1961) and 107 CONG. REC. 15660 (1961).

[9]The Act of September 26, 1961, Pub. L. 87-301, 75 Stat. 650. *See* H.R. REP. No. 1086, 87th Cong., 1st Sess. 5 (1961) and 107 CONG. REC. 15660 (1961).

[10]STATE DEPARTMENT OF HEALTH, INTERCOUNTRY ADOPTION PROGRAMS, POLICIES AND PROCEDURES MANUAL, Chapter 53-100 (October 1, 1969) [hereinafter cited as ICA MANUAL].

intercountry adoption process, that is, the situation where a United States citizen contacts an adoption agency with the intention of having a child emigrate to the United States for adoption; Section Three will discuss and analyze alternatives to the typical intercountry adoption process; and Section Four will discuss recent attempts to adapt the intercountry process to meet the needs of the abandoned and orphaned children in Vietnam.

## II. ADOPTION: THE TYPICAL PROCESS

### A. MINIMUM REQUIREMENTS: A PRELIMINARY SCREENING MECHANISM

The typical intercountry adoption process begins when the prospective parents[11] contact either an international liaison agency, the United States Immigration and Naturalization Service, the California Department of Health, or a state-licensed private adoption agency authorized to provide intercountry adoption services.[12] When an international liaison agency is the initial contact, it will normally direct the individuals to the State Department of Health for the screening and application process.[13] If the initial contact is the Immigration and Naturalization Service, the individuals will be told the requirements and directed to the State Department of Health.[14]

The first function of the preliminary screening process is to determine whether the prospective parents can satisfy the minimum requirements for adoption.[15] The second function of the process is to provide individuals who have expressed an interest in adopting a foreign-born child with information so they may decide if they want to proceed.

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[11] Intercountry adoption by single individuals is discussed *infra* at Section III (B).

[12] International liaison agencies are discussed *infra* at Section II (A)(3). This article will be limited to a discussion of the role of the State Department of Health unless otherwise noted. As of this date four licensed private adoption agencies have been designated by the State Department of Health to do intercountry adoptions. They are: Catholic Social Service of San Francisco, 2255 Hayes Street, San Francisco, California 94117 (limited to applicants who are practicing Catholics and live within the Archdiocese of San Francisco); Children's Home Society of California, 3100 W. Adams Blvd., Los Angeles, California 90018 (serves all applicants throughout California); Family Ministries, 6354 S. Painter Ave., Whittier, California 90601 (limited to applicants who are practicing protestants of an Evangelical persuasion and live in Los Angeles or Orange County); Holy Family Services-Counseling and Adopting, 357 S. Westlake Ave., Los Angeles, California 90057 (serves Archdiocese of Los Angeles).

[13] Holt Adoption Program, Inc., for example, handles its own preliminary screening of applicants. Once the application is accepted by Holt it is forwarded to the State Department of Health.

[14] ICA MANUAL, *supra* note 10 at 53-367.

[15] *See infra* Section III for a complete discussion of the minimum requirements.

### 1. IMMEDIATE RELATIVE STATUS: THE UNITED STATES IMMIGRATION REQUIREMENTS

Aliens seeking to enter the United States for permanent residence are subject to numerical limitations unless they qualify as immediate relatives or fit other specially exempt categories.[16] In intercountry adoptions the status of immediate relative " . . . shall mean the children . . . of a citizen of the United States . . . "[17] To qualify as a child of a citizen of the United States, the child must be an eligible orphan adopted abroad[18] or one who is to be adopted under state law by a married couple, one of whom is a United States citizen, who petitions the Immigration and Naturalization Service.[19] An eligible orphan is a child under the age of fourteen[20] who is an orphan because of the death or disappearance of, or abandonment by, both parents; or if one parent remains, the parent must be incapable of providing proper care and must irrevocably release the child for emigration and adoption.[21]

Prospective parents who file a petition for immediate relative status on behalf of a child must themselves meet basic requirements under the Immigration and Nationality Act. The basic federal regulations are that only a married couple may petition for classification of a child as an orphan eligible for immediate relative status[22] and at least one of the prospective parents must be a citizen of the United States.[23] Furthermore, not more than two petitions for immediate relative status may be approved for one petitioner unless it is necessary to prevent separation of siblings.[24] The Immigration and

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[16] 8 U.S.C. § 1151(a) (1970).
[17] 8 U.S.C. § 1151(b) (1970).
[18] Adoptions abroad are discussed *infra* in Section III.
[19] 8 U.S.C. § § 1101(b)(1)(E), (F) (1970).
[20] The child must be under fourteen years of age at the time the petition is filed with the Immigration and Naturalization Service on his behalf. 8 U.S.C. § 1101(b)(1)(F) (1970).
[21] 8 U.S.C. § 1101(b)(1)(F) (1970). *See* Matter of Del Conte, 10 I. & N. Dec. 761 (July 19, 1964) where the District Director held that the beneficiaries have been abandoned within the meaning of the Immigration and Nationality Act since the parents released them to an international agency for adoption and had refused to pay for their care, although under Italian law the parents had not taken the affirmative action necessary to disclaim them as their heirs. In Vietnam, for example, when the orphanage stated in its release of an orphan for emigration and adoption that the child had been unconditionally abandoned, or the parents were unknown, this was considered sufficient to satisfy the requirements of 8 U.S.C. § 1101(b)(6) (1970). IMMIGRATION AND NATURALIZATION SERVICE, OPERATIONS INSTRUCTIONS AND INTERPRETATIONS § 204.3(c), at 648 (1974).
[22] 8 C.F.R. § 204.2(d)(1) (1974). *See* Matter of Lovell, 11 I & N. Dec. 473 (January 17, 1966) where the Regional Commissioner decided that the language of 8 U.S.C. § 1101(b)(1)(F) " . . . United States citizen and spouse . . ." requires that the adoptive parents be a married couple.
[23] 8 C.F.R. § 204.2(a) (1974).
[24] 8 U.S.C. § 1154(c) (1970). *See* Matter of Del Conte, 10 I & N. Dec. 761, 763 (July 16, 1974) which held second and third petitions valid since the orphans were twins.

Naturalization Service has strictly defined the two petitions limit under 8 U.S.C. §1154(c). In the *Matter of Kim*, the Regional Commissioner upheld the decision that even though the orphan admitted on the petitioner's second petition died one month after entry, the petitioner was still limited to two approved immediate relative petitions under 8 U.S.C. §1154(c).[25] The federal regulations also require that the petitioner and spouse present evidence of compliance with the preadoption requirements, if any, of the state in which the orphan will be adopted.[26]

### 2. *CALIFORNIA ADOPTION OF THE FOREIGN BORN CHILD: INITIAL STATUTORY REQUIREMENTS*

California adoption statutes provide that any adult[27] who is a resident of the state[28] and at least ten years older than the person to be adopted[29] may adopt an unmarried minor child.[30] The statute does not require the adopting parent to be a citizen of the United States.[31] But in order to have a foreign born child classified as an immediate relative under federal regulations, at least one parent must be a United States citizen.[32]

Adoption procedures in California are designated as either "relinquishment" or "independent" adoptions. Relinquishment adoptions occur when the natural parent or parents release a child in writing to a licensed adoption agency.[33] The agency, in accepting the relinquishment of the child from the parent or parents, is responsible for the care of the child and must undertake to place the child for adoption. The agency has sole custody and control of the child until a court of proper jurisdiction grants a petition for adoption.[34] In such cases the agency is a party in the petition for adoption.[35] Independent adoption[36] occurs when the natural parent or parents place the child directly with an individual or family and give their

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[25] Matter of Kim, 11 I. & N. Dec. 69 (December 21, 1964).
[26] 8 C.F.R. § 204.2(d)(2) (1974). *See* Matter of T-E-C-, 10 I. & N. Dec. 691, 692 (January 15, 1964).
[27] CAL. CIV. CODE § 221 (West Supp. 1972).
[28] CAL. CIV. CODE § 226 (West Supp. 1972).
[29] CAL. CIV. CODE § 222 (West Supp. 1972).
[30] CAL. CIV. CODE § 221 (West 1954).
[31] Cabrillos v. Angel, 278 F. 174, 175 (9th Cir. 1922) where the Court stated that the CAL. CIV. CODE § § 221 *et seq.* only requires the petitioners for an adoption be residents of the state.
[32] *See supra* Section II (A)(1).
[33] CAL. CIV. CODE § 224m (West Supp. 1972).
[34] CAL. CIV. CODE § 224n (West Supp. 1972).
[35] *Id.*
[36] Independent adoptions are also called direct adoptions. *See* CALIFORNIA CONTINUING EDUCATION OF THE BAR, ADOPTION, THE CALIFORNIA FAMILY LAWYER, Vol. I, 765, 771 (1961).

consent to adoption.[37] The agency does not join the petition for adoption; its function is to investigate the proposed adoption and the adopting parents and make a report to the court.[38]

Intercountry adoption, when it is provided by the State Department of Health, involves a combination of both relinquishment and independent adoption procedures. The foreign born children are formally relinquished to the international liaison agency in the child's home country. That agency performs the study of the child and has legal control over him. The State Department of Health locates a suitable home, doing home studies in the same fashion as in a relinquishment adoption.[39] Intercountry adoptions resemble independent adoptions in that the State Department of Health does not join in the petition for adoption. Instead the international agency is a party, and the State Department of Health files a court report either supporting or opposing the adoption.[40]

### 3. *INTERNATIONAL LIAISON AGENCIES: MINIMUM REQUIREMENTS*

In general, the international liaison agencies provide social services in the child's native country. In Vietnam, for example, because of the war-caused devastation, one primary function was to give aid to the estimated 25,000 children in South Vietnamese orphanages.[41] The agencies provided medical supplies, food, and in some cases orphanage facilities to children abandoned and orphaned by the war.

At the present time the State Department of Health works with seven international liaison agencies. These are the Holt Adoption Program, Friends of Children of Vietnam, Friends For All Children, Travelers Aid-International Social Service of America, Pearl S. Buck Foundation, the Catholic Conference for Refugees and the David Livingstone Missionary Foundation.[42] These agencies accept custody

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[37] *Id.*

[38] CAL. CIV. CODE § 226.6 (West Supp. 1972).

[39] The home study is discussed *infra* in Section II (B)(1).

[40] ICA MANUAL, *supra* note 10, at 53-451.2. Private adoption agencies designated by the State Department of Health to process intercountry adoptions (*see supra* note 12) were instructed by the State Department of Health to use the procedures required for relinquishment adoptions. That is, the private agency joins in the petition as a party to the adoption under CAL. CIV. CODE § 224n (West Supp. 1972). The reason for this is that if the adoptions were treated as independent adoptions (as they are when the State Department of Health provides the services to the adopting parents), CAL. CIV. CODE § 226.6 (West Supp. 1972) would require that the State Department of Health or a delegated county agency investigate the adoptive placement in a family already studied and approved by a licensed California adoption agency. This would be a duplication and a waste of resources. Letter from Raymond Leber, Assistant Chief, Adoption Services Section, State Department of Health (May 20, 1975).

[41] *New York Times*, August 21, 1973, at 24, col. 4. *See also* 119 CONG. REC. H4323 (daily ed. June 5, 1973).

[42] Holt Adoption Program, Inc., 1195 City View, Eugene Oregon; Friends For All

of the child, secure social and medical histories and determine whether the child is adoptable, and care for the child until a home has been chosen. Once the child's home is chosen, the agency arranges for the necessary waivers, secures the passport and exit visa for emigration, arranges for transportation and the visa for immigration into the United States.

The international liaison agency usually accepts legal responsibility for the child until the California adoption is finalized. If the placement of a child with prospective parents should fail, the agencies respond in differing ways. For example, Friends For All Children places the child in a foster home in Colorado and searches for a new adoptive home.[43] Holt Adoption Program, however, allows the State Department of Health to place the child in foster care until such time as another home is found for placement.[44]

International liaison agency eligibility requirements for prospective parents vary from agency to agency. Some specific requirements include a preference for non-working mothers, sufficient financial stability to provide security, and a preference for two-parent over single-parent adoptions. Due to the general belief that all placements of children must be considered on an individual basis, however, the international liaison agencies set out few absolute restrictions.[45]

## B. PREADOPTION STAGE

### *1. CERTIFICATION*

If the prospective parents decide to continue with the adoption process after the preliminary screening, and the State Department of Health finds that they meet the minimum requirements, a formal application will be sent for the prospective parents to fill out, sign,

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Children, 600 S. Gilpin, Denver, Colorado; Travelers Aid International Social Service of America, 345 East 46 St., New York, New York; Pearl S. Buck Foundation, Inc., 2019 Delancey Place, Philadelphia, Pennsylvania; U.S. Catholic Conference Migration and Refugee Services, 201 Park Avenue South, New York, New York 10003; Friends of Children of Vietnam, 600 Gilpin Street, Denver Colorado 80218; David Livingstone Missionary Foundation Adoption Program, P.O. Box 232, Tulsa, Oklahoma 74101.

[43] Letter from Friends For All Children to parties interested in the adoption of a Vietnamese child (undated; received by the author circa September, 1974).

[44] Interview with Raymond Leber, Assistant Chief, Adoption Services Section, State Department of Health, September 12, 1974).

[45] Some countries, however, place restrictions on who may adopt. For example, the Republic of South Vietnam required that every child eligible for adoption be legally adopted in Vietnam to qualify for emigration, that one of the spouses be over 35 years of age and at least 20 years older than the child to be adopted, and that the spouses have been married 10 years and childless. CIV. CODE OF REPUBLIC OF VIETNAM, Title VII, Article 248. (translated March 27, 1973). In practice these requirements were waived for United States citizens. 119 CONG. REC. E6337 (daily ed. October 9, 1973).

and return.[46] If the State Department of Health decides not to send an application, it will give a reason.[47]

The United States Immigration and Naturalization Service administrative regulations require that the prospective parents meet the preadoption requirements of the state in which they reside for issuance of an immediate relative visa.[48] For the State Department of Health to certify to the Immigration and Naturalization Service that the preadoption requirements of California have been met, it must establish that the home is suitable, that the best interests of the child will be served through the placement, and that no legal barrier appears for the adoption under California laws.[49]

Authority to find and investigate homes for children for adoption is delegated solely to the State Department of Health[50] or agencies it licenses.[51] The preadoption requirements, whether or not the child is residing in the United States, require that the home study must include at least four interviews: two with the couple together, and one with each of them separately.[52] The content of the study must include age, nationality, race, motivation for adoption, preference for a child, capabilities, attitudes, personal relationships, personality, marriages, health, employment, finances, religion, education, and environment.[53]

If the State Department of Health determines a particular set of parents does not meet the preadoption requirements, the parents are precluded from adopting a foreign born child through the typical, intercountry adoption process. The reason is that preadoption certification is necessary for the issuance of the immediate relative nonquota visa.[54] The alternative adoption methods discussed in Section III may be the only recourse open to a family that wishes to adopt.

### *2. CHILD SELECTION*

When the State Department of Health is satisfied that the prospective parents meet the preadoption requirements, a copy of the home study is sent to the international liaison agency for selection of a child.[55] The agency will then select a child who meets the prospec-

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[46] The formal application is a prerequisite to the preadoption certification. 22 CAL. ADM. CODE 30629 (1972).
[47] ICA MANUAL, *supra* note 10, at 53-381.1.
[48] 8 C.F.R. § 204.2(d)(2) (1974).
[49] STATE DEPARTMENT OF HEALTH, INTERCOUNTRY ADOPTION PROGRAM PAMPHLET (January, 1975).
[50] CAL. CIV. CODE § 224q (West Supp. 1972).
[51] *See* CALIFORNIA CONTINUING EDUCATION OF THE BAR, ADOPTION, THE CALIFORNIA FAMILY LAWYER, Vol. I, 765, 771 (1961).
[52] 22 CAL. ADM. CODE 30633 (1972).
[53] ICA MANUAL, *supra* note 10, at 53.383.11. *See also* 22 CAL. ADM. CODE 30637 (1972).
[54] 8 C.F.R. § 204.2(d)(2) (1974).
[55] ICA MANUAL, *supra* note 10, at 53-403.2.

tive parents' wishes and capabilities.

The international liaison agency will send to the State Department of Health information to be discussed with the prospective parents regarding the child's age, health, personality, and if available, personal and family history. The parents and State Department of Health adoption worker make a decision regarding the child's acceptability and this is communicated to the agency.[56]

### 3. *TIME: INITIAL REQUEST TO PREADOPTION CERTIFICATION*

The time delay in intercountry adoptions had its greatest impact in California with respect to the time span between the prospective parents' initial inquiry and the completion of the home study and preadoption certification. Individuals making an inquiry have in the past waited 12 to 15 months before the State Department of Health was able to respond to their request to adopt a child.[57] The waiting period, plus the three to six months needed for completion of the home study, resulted in a time lag of 15 to 21 months before the prospective parents received preadoption certification.[58]

Some reasons given for the time lag were: (1) increased interest in intercountry adoptions has resulted in the State Department of Health receiving 50 inquiries per month,[59] resulting in the creation of a backlog of 400 cases waiting for processing;[60] (2) under-staffing of the intercountry adoption program;[61] and (3) excessive paperwork and "red tape" involved in intercountry adoptions.[62]

Much adverse publicity[63] resulting from the time lag eventually led to the introduction and passage of SB 2424 by the California Legislature.[64] The statute requires the State Department of Health to complete investigations for a "priority child"[65] within six months of a

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[56] *Id.* at 53-405.

[57] State Department of Health News Release, Dr. William Mayer, State Health Director (No. OCDH #91, July 30, 1974) [hereinafter cited as Mayer News Release].

[58] *Id.*

[59] Statement by Mary Sullivan, Chief of Adoption Services Section, State Department of Health, to the Senate Select Committee on Children and Youth re: Adoptions and Foster Care (April 13, 1974).

[60] Mayer News Release, *supra* note 57.

[61] Memorandum to Members of the Ways and Means Subcommittee No. 1 from Steven Thompson, Consultant re: Hearing, March 25, 1974, on Health and Welfare Agency and the Department of Health (March 22, 1974).

[62] Statement by State Senator Anthony C. Beilenson Regarding SB 2424, Cal. Legislature (June 11, 1974).

[63] *See* Sally Rogers Clark, Children We Left in Vietnam, *Los Angeles Times* (December 9, 1973); Roger Blubaugh, Parents Wait, Wait, *Sacramento Bee* (July 4, 1974); Ann Reed, Adoption Woe, *Sacramento Bee* (February 17, 1974).

[64] Chapter 816, Statute of 1974. *See also* CAL. SENATE WEEKLY HISTORY, Part 4, 623 (October 4, 1974). *See* text of note 149, *infra.*

[65] The term priority child, which the international liaison agency defines, general-

request. In all other cases the investigation must be completed within 12 months.[66]

## C. EMIGRATION AND IMMIGRATION

### *1. IMMEDIATE RELATIVE STATUS*

#### *a. United States Petition Investigation*

Once the State Department of Health determines that the prospective parents meet the preadoption requirements in California, they must petition the Immigration and Naturalization Service for classification of the child selected as an immediate relative.[67] A separate petition for each child, who must be identified in the petition, is submitted under oath or affirmation, accompanied by a fee of $25 to the office of the Immigration and Naturalization Service having jurisdiction over the place where the petitioner is residing.[68] The prospective parents must also submit finger print charts, evidence of United States citizenship of the petitioner, a certificate of marriage, legal proof that any previous marriages were terminated, evidence that the prospective parents are able to financially support and care for the orphan, an abstract of the State Department of Health study, evidence that the parents have met California preadoption requirements, a birth certificate or other proof of the orphan's age, and evidence that the child is an eligible orphan as defined in 8 U.S.C. §1101(b)(1)(F).[69] Immigration and Naturalization Service accepts only original documents or those an attorney has certified.[70]

The Immigration and Naturalization Service administrative regulations give priority[71] to the investigation and adjudication of immediate relative visa petitions for children.[72] The process requires: (1) a neighborhood, employment, and home investigation, (2) a finger print check of the petitioners,[73] (3) one abstracted copy of the State Department of Health investigation, and (4) the State Department of Health views concerning the adoption.[74] The Immigration and

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ly refers to older, handicapped, multiracial or other hard-to-place children. Cal. Assembly Committee on Judiciary, Bill Digest: SB 2424; Hearing Date August 20, 1974.

[66] *Id.*

[67] *See supra* Section III (A)(2). Immediate relative visa petition for the orphan child is submitted on Immigration and Naturalization Service Form I-600.

[68] 8 C.F.R. § 204.1(b) (1974).

[69] 8 C.F.R. § 204.2(d) (1974).

[70] 8 C.F.R. § 204.2(f) (1974).

[71] IMMIGRATION AND NATURALIZATION SERVICE, OPERATIONS INSTRUCTIONS AND INTERPRETATIONS, § 204.3(b) at 647 (1974).

[72] *Id.*

[73] *Id.*

[74] *Id.*

Naturalization Service typically accepts the State Department of Health's certification as to the neighborhood, home, and employment investigations. Thus the only outside investigation it is required to conduct is a finger print check on the prospective parents through the Federal Bureau of Investigation.[75] The purpose of the investigation and documentation is to help the Immigration and Naturalization Service determine whether, in their discretion, the child will be adopted and cared for by the prospective parents, and to insure satisfaction of the statutory requirements of the Immigration and Nationality Act, set out in Section II(2).[76]

*b. Overseas Investigation*

If the Immigration and Naturalization Service office in the United States approves the petition, it is forwarded to the American Consul in the country of the child's residence, together with the evidence of the parents' financial status, preadoption certification, and the child's records.[77]

The purpose of the overseas investigation is to confirm that the child is an orphan and has no significant disease or disability not set out in the immediate relative petition.[78] The Consular officer will work in cooperation with the international liaison agency. If no adverse information appears, the visa application will be processed to permit the child's entry into the United States.[79]

The Consul abroad has a statutory grant of plenary power over the issuance of immigration visas; neither the courts nor the Secretary of State may review the decision.[80] Criticism of this "administrative

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[75] *Id.*; interview with Mr. James Dorsey, Immigration Examiner, Immigration and Naturalization Office, San Francisco, California (November 1, 1974). *See also* 8 C.F.R. § 204.2(d) (1974).

[76] *See* Matter of T-E-C-, 10 I. & N. Dec. 691 (January 15, 1964). *See also* Matter of Suh, 10 I. & N. Dec. 624 (November 6, 1962), where the Regional Commissioner affirmed the District Director's decision to deny petitioner and spouse approval of an immediate relative petition because they had two minor daughters, petitioner had no steady employment, petitioner's spouse worked as a night superintendent at a hospital from 11:00 P.M. to 7:00 A.M., and petitioner had a long record of arrests and convictions. *See also* Matter of Russell *et al.*, 11 I. & N. Dec. 302, 305 (September 7, 1965), where the Deputy Associate Commissioner affirmed the District Director's denial of an immediate relative petition to three sibling children citizens of the Philippines based on the results of guidance, supervision, and care afforded the petitioner's 16 year old daughter who was a disciplinary problem at the Navy Dependents' School in the Philippines. The Director stated it has not been established the petitioners will properly care for the children if they are admitted to the United States.

[77] IMMIGRATION AND NATURALIZATION SERVICE, OPERATIONS INSTRUCTIONS AND INTERPRETATIONS, § 204.3(e) at 649 (1974).

[78] *Id.* at 204.3(f).

[79] *Id.*

[80] 8 U.S.C. § 1201(a) (1970) grants power to the consular officers to issue visas. 8 U.S.C. § 1104(a) (1970) denies such power to the Secretary of State. 8 U.S.C. § 1101(a) (1970) defines consular officers. *See* U.S. *ex rel.* Ulrich v. Kellogg, 30 F.2d 984, *cert. denied*, 279 U.S. 868 (1929).

absolutism"[81] led the State Department to adopt procedures to supervise consular refusals and limit the possibility of error or grossly arbitrary action.[82] Although the procedural changes are an improvement, they do not alter the consul's absolute and unreviewable authority.[83] This is in sharp contrast to the Immigration and Naturalization Service decisions in the United States, where administrative and judicial review exist.[84]

After the child has satisfied the Consul and transportation line of his admissibility,[85] he still must face the representative of the Attorney General in the form of an Immigration and Naturalization Service inspection and a Public Health Officer on his arrival in the United States.[86] The issuance of the immediate relative visa does not guarantee admission to the United States;[87] the child can be found inadmissible because of health reasons or for lack or inaccuracy of documents.[88]

*c. Time Lag in Emigration and Immigration*

The total time involved in obtaining immediate relative visa and the emigration visa from the child's home government can vary from two to eight months. The time in each of the three procedures is dependent upon innumerable variables, including correct and sufficient documentation and efficiency of administrators. It is therefore extremely important that the documents the Immigration and Naturalization Service, the international liaison agency, and the child's home government request be prepared with exacting attention. A mistake, an incorrectly notarized form, any error, can mean a delay of weeks or months because of the distance and large number of agencies involved.

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[81] GORDON & ROSENFIELD, 1 IMMIGRATION LAW AND PROCEDURE § 3.8b at 3-58 (1974).

[82] 22 C.F.R. § 42.130 (1974).

[83] *See supra* note 80. In practice the consular officers accept the recommendation of the Immigration and Naturalization Service office in the United States regarding the prospective parents. Interview with Mr. James Dorsey, Immigration Examiner, Immigration and Naturalization Office, San Francisco, California (November 1, 1974).

[84] *See* Comment, *Alternatives to Deportation: Relief Provisions of the INA*, this volume.

[85] Transportation lines may be subject to administrative fines of $1000 per alien if they carry inadmissible persons. 8 U.S.C. § § 1322-23 (1970).

[86] WASSERMAN, IMMIGRATION LAW AND PRACTICE 133 (2d ed. 1973).

[87] *See* 8 U.S.C. § 1201(h) (1970). *See also* Vitale v. I.N.S., 463 F.2d 579 (C.A. Ill. 1972) where the court held issuance of a visa does not entitle an alien to enter the United States if, on arrival at the port of entry, he is found to be inadmissible. *See also* U.S. *ex rel.* Strachev v. Reiner, 101 F.2d 267 (C.C.A.N.Y. 1939), where the court stated the purpose in requiring a passport visa is to afford a preliminary investigation of the fitness of the alien to enter the country before he comes to the United States shores and applies for admission.

[88] 8 C.F.R. § 235 (1974) for Immigration and Naturalization Service regulations on inspection of persons applying for admission.

## D. PLACEMENT: SUPERVISION AND ADOPTION

Following the child's arrival in the new home, the State Department of Health will provide supervisory post-placement services for a period between the placement and the adoption. The post-placement supervisory period is required to be at least six months, but normally it will last one year.[89] The supervision period must include at least four interviews to aid the family and child during this difficult adjustment period.[90] The State Department of Health worker helps the family harmonize language and cultural differences, eating customs, and a multitude of other problems that arise.[91] The post-placement supervisory period corresponds to that in the relinquishment adoption program.[92]

When the supervisory period begins, the couple's attorney files a petition for the child's adoption.[93] At this point the intercountry adoption program follows the procedures of the independent adoption program. Thus, the State Department of Health does not join in the petition as a party as in relinquishment adoptions.[94] Instead the State Department of Health files a report recommending to the court its opinion as to whether or not the adoption should be completed;[95] the adoption proceeds under California Civil Code Section 226.[96] The State Department of Health considers the child, until adopted, to be in the legal custody of the international liaison agency.[97] Therefore, the consent of the child's natural mother or father is not necessary.[98]

During the supervisory period, the State Department of Health will send regular reports to the international liaison agency regarding the family's and child's adjustment.[99] When the State Department of Health and the family are agreed that the family relationship is firmly established, the State Department of Health will recommend that the international liaison agency issue its legal consent to the adoption.[100]

Within the six months to one year post-placement supervisory

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[89] 22 CAL. ADM. CODE 30647 (1972).
[90] *Id.*
[91] ICA MANUAL,, *supra* note 10 at 53-441.1.
[92] *Id.* at 53-441.2.
[93] *Id.* at 53-441.3.
[94] *See* CAL. CIV. CODE § 224n (West Supp. 1972).
[95] 22 CAL. ADM. CODE 30727 (1972).
[96] *See supra* note 40. With private adoption agencies the usual relinquishment and joinder provisions apply . *See also* CAL. CONTINUING EDUCATION OF THE BAR, ADOPTIONS, THE CALIFORNIA FAMILY LAWYER, Vol. I, 765 *et seq.* (1961).
[97] ICA MANUAL, *supra* note 10 at 53-451.2. *See also* CAL. CIV. CODE § 224(3) (West Supp. 1972).
[98] ICA MANUAL, *supra* note 10 at 53-451.2.
[99] *Id.* at 53-443.
[100] *Id.*

period[101] the State Department of Health will issue its report to the court. The court report will be based on the case worker's study material and include a summary of information about the child, the natural parents, and the adopting family, a summary evaluation of the findings, and the State Department of Health recommendations.[102] The couple's attorney will receive a copy.[103]

The matter of adoption rests ultimately in the discretion of the court.[104] Therefore, an adoption may be granted in spite of an unfavorable agency report.[105]

## E. THE COSTS: TIME AND MONEY

### *1. THE ISSUE OF TIME*

The time required from the initial inquiry to the placement of the child in the home can range from 12 to 30 months. Also, a 12-month period separates the time of placement of the child in the home to the completion of a legal adoption.[106] Thus the total time from the initial inquiry to the child's adoption can range from two years to three and one-half years. If the prospective parents request an infant for adoption, this can add six months or more to the time period.[107]

### *2. THE FINANCIAL COST*

Families considering an intercountry adoption should expect to meet an overall expense of approximately $1500 to $3000 in addition to an attorney's fee for services rendered in the United States.[108] The costs vary according to whether the prospective parents work through a private adoption agency or the State Department of Health and the international liaison agency.

The State Department of Health charges $300 for its services. This cost may be reduced or waived in any case in which the Department finds the amount of fee would "cause economic hardship to the adoptive parents detrimental to the welfare of the adopted child or is necessary for the placement of a hard-to-place child."[109] Private

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[101] *Id.* at 53-441.
[102] *Id.* at 53-466. CAL. CIV. CODE § 225.5 (West Supp. 1972).
[103] ICA MANUAL, *supra* note 10 at 53-455.
[104] *In re* Santos Estate, 185 C. 127, 195 P. 1055 (1921).
[105] For a review of California adoptions law, *see* CALIFORNIA CONTINUING EDUCATION OF THE BAR, ADOPTIONS, THE CALIFORNIA FAMILY LAWYER, Vol. 1, 765 *et seq.* (1961).
[106] The twelve month period between placement and legal adoption is less important since the child is in the home with the new parents.
[107] Interview with Raymond Leber, Assistant Chief, Adoption Services Section, State Department of Health (September 12, 1974).
[108] STATE DEPARTMENT OF HEALTH, INTERCOUNTRY ADOPTION PROGRAM PAMPHLET (January, 1975).
[109] CAL. CIV. CODE § 225p (West Supp. 1972). This section defines a hard-to-place child as a child who because of age, ethnic background, race, color, lan-

adoption agencies charge from $750 to $1400 for intercountry adoptions. The charge may be waived or reduced in some cases.[110]

The international liaison agencies charge varying fees based on the family's income, age of the child, the child's home country, and amount of the air fare. Their objective is to help defray the cost of child care as well as the social and legal services involved in intercountry adoption. The international liaison agency costs are typically divided between an application fee that ranges between no fee and $100, an adoption processing fee that tends to be based on the prospective parents' taxable income and ranges from $100 to $1000, and transportation costs of $350.[111] In addition the Immigration and Naturalization Service charges a $25 fee for filing the immediate relative visa petition.[112]

## III. ALTERNATIVE APPROACHES

The process described above, although time consuming, is the most widely used because of its lower cost and greater convenience to the adopting parents. Conditions may exist which necessitate that the prospective parents not use the typical approach, but instead use an alternative method of adopting a foreign born child. The parents may choose the alternative approach because of frustration with the typical process, because the adopting parent is single and unable to use the typical process, or because the parents were denied preadoption certification. This section will discuss these alternative approaches.

### A. ADOPTION ABROAD

#### *1. IMMEDIATE RELATIVE STATUS*

Immediate relative status may be conferred on a child[113] adopted abroad[114] or on one who is to be adopted in the United States by a United States citizen and spouse.[115] The adoption of a foreign born child overseas is the focus of discussion here.

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guage, or physical, mental, emotional or medical handicaps has become difficult to place in an adoptive home.

[110] STATE DEPARTMENT OF HEALTH, ADOPTIONS IN CALIFORNIA, GENERAL INFORMATION (1973).

[111] STATE DEPARTMENT OF HEALTH, INTERCOUNTRY ADOPTION TRAINING SESSION OUTLINE, Fees of Liaison Agencies Providing Services (August 19, 1974).

[112] 8 C.F.R. § 204.1(b) (1974).

[113] 8 U.S.C. § § 1151(a), (b) (1970).

[114] 8 U.S.C. § 1101(b)(1)(E) (1970).

[115] 8 U.S.C. § 1101(b)(1)(F) (1970).

*a. Adoption Abroad of a "Child"*[116]

An immediate relative visa may be granted on behalf of a child under 14 years of age adopted abroad if the child has resided with and been in the legal custody of his adopting parent for at least two years.[117] The courts have interpreted the Act strictly. The definition of "child" contained in 8 U.S.C. §1101(b)(1) that governs immediate relative status in this instance did not extend to adopted children until 8 U.S.C. §1101(b)(1)(E) was added by the Act of September 11, 1971 (71 Stat. 69). The amendment, which allows immediate relative status to a child adopted abroad who has lived with the parents for two years, was designed to prevent hardship and keep bona fide families together. Nevertheless, Congress desired to prevent recognition of ad hoc adoptions made only to circumvent the immigration laws.[118] To effectuate the intent of Congress, the relationship must be based on a valid subsisting adoption which confers rights and obligations on a child similar to that of a natural child's.[119] The validity of adoption is governed by the law of the place where the adoption status was created.[120] For example, an informal "Deed on Giving Own Son Away to Other Persons for Adoption" that was drafted and signed by the natural parents, the adopting parents, and endorsed by the People's Committee in the People's Republic of China, was held to be valid for purposes of the statute since it was a valid adoption in the People's Republic of China and conferred rights similar to a natural child's.[121]

A second requirement of the Congressional intent as interpreted by the Immigration and Naturalization Service decisions is that the "true parental relationship" must be established with the child prior

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[116] Adoption abroad of a "child" is defined by 8 U.S.C. §1101(b)(1)(E) (1970).
[117] 8 U.S.C. §1101(b)(1)(E) (1970).
[118] Matter of Yeun, INS Interim Dec. #2130 (March 13, 1972).
[119] Matter of Chan, 12 I. & N. Dec. 513 (November 20, 1967).
[120] *Ex Parte* Fong Yim *et al.*, 134 Fed. 938, 941-2 (S.D.N.Y. 1905). The adoption in China was without the legal formalities yet it created rights and obligations equivalent to the rights and obligations of natural children. Matter of R-, 6 I. & N. Dec. 760 (Oct. 19, 1955). The legal status of adoption is by reference to the law of the place where such status was created. A Bahamian adoption is valid only by the order of a court, so an agreement of adoption between consenting parties is not valid. Matter of Kwok, INS Interim Dec. #2145 (April 25, 1972) reaffirmed the long standing rule that the validity of an adoption for immigration purposes is governed by the law where the adoption occurred.
[121] Matter of Yee, INS Interim Dec. #2146 (April 28, 1972). *See* Matter of Ashree, Ahred, and Ahred, INS Interim Dec. #2190 (March 30, 1973) where the Board of Appeals upheld the District Director's denial of a visa petition because legal adoption does not exist in the Arab Republic of Yemen or in the Peoples' Republic of Southern Yemen. *See also* Matter of Kong, INS Interim Dec. #2275 (March 25, 1974), where the Board found that under the law of Burma, a Kittima adoption confers on the adopted person some legal status and is valid for immigration purposes, while an Appatittha adoption is purely ceremonial and not valid.

to age 14.[122] That is, it must be evident that the child resided or was in the legal custody of the household of the petitioner for two years prior to the child's fourteenth birthday.[123] The two year legal custody and residence may be satisfied when the child's custody and residence was with only one of the adoptive parents.[124]

In visa petition proceedings the burden of proof to establish eligibility of the benefit sought under the immigration law rests with the petitioner.[125] In case of adoption without benefit of a formal recorded decree, it is permissible to resort to other forms of probative evidence.

*b. Adoption Abroad of an Eligible Orphan*[126]

Immediate relative status may be granted[127] to a child under the age of 14 when the petition is filed and the child is an eligible orphan adopted abroad by a United States citizen and spouse who personally saw and observed the child prior to and during the adoption proceedings.[128]

The immigration of an "eligible orphan" adopted abroad differs from the immigration of a "child" adopted abroad as discussed in the preceding section. First, the immigration of an eligible orphan requires that the child be an eligible orphan as defined in 8 U.S.C. §1101(b)(1)(F). That is, the eligible orphan must be under fourteen and an orphan because of the death, disappearence, or abandonment by both parents; or the remaining parent must have irrevocably released the child for adoption and emigration. Second, the parent and child must undergo an extensive investigation by the Immigration

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[122] Matter of Yuen, INS Interim Dec. #2130 (March 13, 1972).

[123] *Id. See* Matter of Lee, 11 I. & N. Dec. 911 (December 9, 1966), where the Board decided 1 year and 9 months residence as defined in 8 U.S.C. §1101(A)(33) is not sufficient to satisfy the 2 year requirement under 8 U.S.C. §1101(b)(1)(E).

[124] Matter of Y-K-W-, 9 I. & N. Dec. 176 (February 28, 1961). *See also* Ng Fun Yin v. Esperdy, 187 F. Supp. 51, 53 (D.D.C. 1966), in which the residence of the adopted child for the 2 year period is not required to be with the citizen adopting parent, but residence with the non-citizen adopting parent will suffice. *See also* Matter of Rodriguez, INS Interim Dec. #2195 (April 13, 1973), where an unmarried woman adopted a 1 day old child under Chinese customary law in Hong Kong and 6 months later married. They, as a married couple, lived with the child for less than 2 years when they petitioned on behalf of the child. The District Director's grant of a visa was upheld since the woman had lived with the child the required 2 years.

[125] Matter of Brantigan, 11 I. & N. Dec. 493 (February 8, 1966).

[126] Orphan is defined by 8 U.S.C. §1101(b)(1)(F) (1970). *See also* text accompanying note 20, *supra.*

[127] 8 U.S.C. §1151(b) (1970).

[128] 8 U.S.C. §1101(b)(1)(F) (1970). While it is necessary that both parents observe the eligible orphan prior to or during the adoption (8 U.S.C. §1101(b)(E)), only one parent needs to stay through the adoption to file the immediate relative visa petition. IMMIGRATION AND NATURALIZATION SERVICE, OPERATIONS INSTRUCTIONS AND INTERPRETATIONS, §204.3(g) at 651 (1974).

and Naturalization Service and the Consulate that is equivalent to the investigation done when the eligible orphan emigrates here for the typical intercountry adoption process.[129] Third, because the adoptive parents have, in effect, met the preadoption requirements and the child is an eligible orphan as defined in the Immigration and Nationality Act,[130] there is no requirement that the child have been in the legal custody of an adoptive parent for two years prior to immigration.[131] (See III A(1)(a)) The bona fide parental relationship and eligibility to immigrate as an immediate relative is satisfied by the investigations and the eligible orphan status.

The U.S. citizen and spouse who decide to proceed abroad to adopt an orphan can contact the Immigration and Naturalization Service office in their area for advance processing, or they can wait until they reach the country where they intend to adopt and contact the consulate officer there for determination of their ability to be granted an immediate relative visa petition on behalf of an eligible orphan.[132]

If the prospective parents do intend to proceed overseas to adopt a foreign born eligible orphan, they should contact the Immigration and Naturalization Service in writing for advance processing of the request for an immediate relative visa.[133] The Immigration and Naturalization Service will request that the prospective parents provide its office with finger print charts, proof of United States citizenship, proof of marriage, and evidence that they will be able to support and care for the orphan.[134] Although the Immigration and Naturalization Service will do all the processing feasible during the advance processing procedure, it will make no final decision on the immediate relative visa petition until the orphan is found and selected for adoption and the parents have filed the correct forms with the consulate overseas.[135]

The valid adoption requirements discussed in Section III(1)(a) above apply here: that is, for the adoption to be valid it must be valid under the law of the foreign jurisdiction and confer rights similar to those of a natural child's.

It is possible to proceed overseas, adopt an orphan, and then apply for an immediate relative visa. The process is risky, however, because

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[129] *See supra* Section III for description of the typical intercountry adoption process.
[130] 8 U.S.C. § 1101(b)(1)(F) (1970).
[131] *See supra* Section III (A)(1)(c).
[132] 8 C.F.R. § 204.1(b) (1974).
[133] Interview with James Dorsey, Immigration Examiner, Immigration and Naturalization Service, San Francisco, California (November 1, 1974).
[134] IMMIGRATION AND NATURALIZATION SERVICE, OPERATIONS INSTRUCTIONS AND INTERPRETATIONS, § 204.3(g) at 650 (1974).
[135] *Id.*

it does not guarantee that the immediate relative visa will be granted.[136] Moreover, the time spent overseas will be longer because the Consulate and the Immigration and Naturalization Service must undertake their investigations. This procedure has some advantages over the typical intercountry adoption discussed in Section II, *supra* , and the adoption of a child discussed in Section III (1)(a), *supra.* This approach can save time, especially if the parents use the advance processing completed by the Immigration and Naturalization Service; further, there is obviously a psychological, if not practical, advantage in being able to see and select the child in person. The major disadvantage to most individuals is the financial cost and time required to travel and live overseas for six months to a year while the adoption and immigration processes are completed. Furthermore, individuals who use the alternative approaches and thus bypass international and state agency supervision run the danger of being taken advantage of by unscrupulous persons. This could be detrimental to the prospective parents not only in terms of time and money, but also in terms of emotional costs.

## B. SINGLE PARENT ADOPTIONS

Under present law only a United States citizen and spouse may file an immediate relative petition for an orphan adopted abroad or an orphan coming to the United States for adoption pursuant to 8 U.S.C. §1101(b)(1)(F). Immigration and Naturalization Service administrative decisions have held that an unmarried person may not petition for immediate relative status for an otherwise eligible orphan.[137]

Immigration law places a severe burden on single individuals who wish to adopt a foreign born child. It prevents a single person from filing a petition for admission of an otherwise eligible orphan unless the child has been adopted abroad, is in the legal custody of, and has resided with the adoptive parent for a period of two years.[138] That is, the individual must qualify under 8 U.S.C. §1101(b)(1)(E).[139] Unless the parent can meet these requirements, the child must be registered

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[136] Interview with James Dorsey, Immigration Examiner, Immigration and Naturalization Service, San Francisco, California (November 1, 1974).
[137] Matter of Lovell, 11 I. & N. Dec. 473 (January 17, 1966). Matter of D-, 8 I. & N. Dec. 628 (April 14, 1960).
[138] H.R. REP. No. 93-462, 93d Cong., 1st Sess. (1973).
[139] On May 7, 1973, HR 7555 was introduced in the House of Representatives. The purpose of the bill was to grant a child adopted by a single United States citizen the same immediate relative status for immigration purposes as a child adopted by a United States citizen and spouse. The bill was reported out of the Committee on the Judiciary and passed the House on September 17, 1973. However, no action was taken by the Senate Judiciary Committee before the end of the 93d Congress. 119 CONG. REC. H3410 (daily ed. May 7, 1973).

for a nonpreference visa number and, in most countries, placed on a waiting list.

## IV. THE CONFLICTING CONCERNS OF INTERCOUNTRY ADOPTION AND RECENT HISTORY

The guiding purpose of adoption law is to promote the welfare of the child.[140] Accordingly, the present intercountry adoption program evolved to insure that each adopted foreign born child reaches a good and stable home.[141]

Few would argue that intercountry adoptions should be done carelessly and without adequate safeguards. A child going to a foreign country is even more vulnerable than one adopted within his own country and therefore needs extra safeguards. A child must be assured of full adoption with name, inheritance rights, and citizenship, as well as agency supervision to see that the rights of the child are assured and adjustment is satisfactory.[142] Such a process, as it presently operates, almost always insures a good home to a child,[143] but it takes a great deal of time.

Individuals who decide to adopt a foreign born child through the typical intercountry adoption process must be willing to spend time assuring the agencies, state, federal, and international, that they are sincere, and financially and emotionally able to raise a child born in another culture. Increasing numbers of United States citizens have, in

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[140] *See* STATE DEPARTMENT OF HEALTH, ADOPTION SECTION 1974-75 PROGRAM STATEMENT, where the objectives of the California adoption program are set out.

> To bring together, under circumstances which protect the interests of all concerned, children needing permanent homes and people desiring to adopt them; to safeguard children when adoptions are made through private arrangements; to protect the legal and social interests of children, natural parents, and adopting parents; and to provide a central resource for information and control in all California adoptions.

*See also* Dept. of Social Welfare v. Superior Court of Contra Costa County, 1 C.3d 1, 81 Cal. Rptr. 345 (1969); Walter v. August, 186 C.A. 2d 395, 8 Cal. Rptr. 778 (1960), where the courts have held the adoption statutes are to be liberally construed with the aim of accomplishing their purpose of promoting the welfare of the child.

[141] A great deal of time must be spent to insure that each child is placed in a good home. The family must be investigated and a decision made as to the suitability of the family who wants to adopt a foreign born child.

[142] For a discussion of the reasons in favor of intercountry adoptions, *see* Adams, *Some Thoughts on Intercountry Adoption*, INTERNATIONAL ADOPTION HANDBOOK 1, 61, published by Organization for United Response, 3148 Humboldt Avenue South, Minneapolis, Minnesota 55408.

[143] Nationwide statistics regarding the replacement of foreign-born children adopted by United States citizens because of failed placements do not seem to exist. Holt Adoption Program, Inc., replacement statistics, for example, are known to be less than 2%. Letter from Helen Miller, Supervisor of Social Services, Holt Adoption Program, Inc. (March 17, 1975).

recent years, considered intercountry adoption because of the plight of the thousands of children that were abandoned and orphaned as a result of the war in Vietnam, as well as the shortage of native-born children available for adoption. The pressures of the increased numbers of applications on the state and international adoption agencies strained the available resources. The resulting delays and frustrations caused a re-examination of the intercountry adoption process in terms of its original concern as a humanitarian emergency measure after World War II and the Korean War and the evolution into its present concern with insuring a good and stable home for each child.

Legislative programs were proposed on both the state level in California and the federal level in response to the needs of the children in Vietnam. The state of California acted within its sphere of authority to accelerate the preadoption and certification process.[144] On the federal level proposals were made that would have, under certain conditions, conferred citizenship on abandoned and orphaned children.[145] In each case the catalyst for the action was the plight of the thousands of children of mixed parentage that were abandoned by their Vietnamese and American parents.[146] In each case the focus was the simplification of the existing intercountry adoption process.[147]

Intercountry adoption, as it presently exists, is not a process that is adaptable to the rescue of the massive numbers of children such as were orphaned and abandoned in Vietnam. Special measures must be utilized to supplement the intercountry adoption process if we hope to provide adoptive homes for such large numbers of orphaned and abandoned children in the shortest possible time. The use of the parole power in April, 1975 by Attorney General Edward Levi which allowed the admission of Vietnamese orphans into the United States for later adoption is an example of such supplementary action.[148] This action by the Attorney General is not without precedent, since

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[144] Chapter 816, Statute of 1974; SB 2424 was introduced in the California legislature on May 13, 1974 by State Senator Anthony Beilenson. It was signed into law on September 18, 1974. CAL. SENATE WEEKLY HISTORY, Part 4, 623 (October 4, 1974). *See* the discussion of the bill's effect at the text accompanying notes 63 to 66, *supra*.

[145] H.R. 9391 was introduced into the 93d Congress, 1st Session on June 5, 1973 by Representative William Steiger of Wisconsin and Representative Howard Robison of New York. 119 CONG. REC. H4323 to H4326 (daily ed. June 5, 1973). H.R. 8965, 9264, 9271, 9377, 9438, 9774, 9978, 14187 and 16346 were identical bills introduced by various sponsors during the 93d Congress.

[146] H.R. 8381 § 1(6) states "the United States has a special responsibility to assist and in facilitating the care and adoption of the children in South Vietnam whose parent is a United States citizen no longer providing parental care to the child." *See also* 119 CONG. REC. H4323 to H4326 (daily ed. June 5, 1975); Statement by Cal. State Senator Anthony Beilenson Regarding SB 2424 (June 5, 1974).

[147] *See* note 146, *supra*.

[148] *See The Washington Post* at 8, col. 14 (April 16, 1975); *Los Angeles Times* at 1, col. 5 (April 23, 1975).

it was utilized after World War II to admit large numbers of orphans for later adoption.[149]

## V. CONCLUSION

The typical intercountry adoption is time-consuming and a frustrating procedure. The goal is to insure that the foreign born child is adopted by parents that are able to raise the child in a stable environment. The procedure can be made more efficient and still insure that the primary goal is attained. While intercountry adoption was not the answer to the needs of all the children in Vietnam, it did serve to provide children to the large numbers of parents who wished, for whatever reason, to adopt such a child.

*Robert J. Funk*

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[149] *See* Krichtsky, *Immigrant Orphans*, 7 I. & N. REPORTER 19, 20 (October 1958) regarding the use of the parole procedure of 8 U.S.C. § 1182(d)(5) to prorole orphans into the United States on September 26, 1956.