

Fact Sheet - Expatriate Adoption

As there is no formal agreement between Australia and Vietnam regarding adoptions, any adoptions made in Vietnam are privately arranged through the Ministry of Justice.

Australian Government representatives in Vietnam cannot help with adoption arrangements. If you wish to proceed with a privately arranged adoption, it is strongly recommended that you first seek legal advice both in Australia and in Vietnam.

You need to ensure that the adoption meets the requirements of Australia's Migration Regulations and that the child will be eligible to enter Australia. There is no provision to grant a visa to a child who does not meet the requirements of the Migration Regulations, even if the adoption has already occurred and is lawful in Vietnam.

What is Expatriate Adoption?

Expatriate adoption occurs when an Australian living abroad adopts a child from the country in which he or she is resident. The adoption occurs through the overseas country's domestic processes and is finalised in that country. Expatriate adoption can also include third country adoption, where an Australian living abroad in Country B, adopts a child from Country C. Although such adoptions may be legal and final in the overseas country/countries, it may not meet legal requirements in Australia.

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.

Immigration Requirements for Expatriate Adoption

The Department of Immigration and Border Protection (DIBP) is responsible for issues relating to immigration, visas and citizenship in Australia. DIBP 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 inter-country 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 welfare authority.

Because expatriate adoptions occur without the involvement of State and Territory authorities, the only circumstance where a visa may be granted by DIBP 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.

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 which exist in the programs managed by the Australian Commonwealth, State and Territory Central Authorities. The Australian Government's involvement in expatriate adoptions is limited to determining whether 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 overseas country.

Further Information:

<https://www.ag.gov.au/FamiliesAndMarriage/IntercountryAdoption/Pages/Intercountryadoptionpoliciesandkeydocuments.aspx>