

Short questionnaire

Therefore, States are respectfully requested to provide responses to the following questions which relate to the recognition in one State of a domestic adoption granted in another State:

Name of State:	United States
<u>Information for follow-up purposes</u>	
Name and title of contact person:	Trish Maskew
Name of Authority / Office:	U.S. Central Authority/Department of States
Telephone number:	
E-mail address:	

A. RECOGNITION IN YOUR STATE OF DOMESTIC ADOPTIONS GRANTED PREVIOUSLY IN OTHER STATES

The law and procedure in your State

1. Please briefly outline the **law** (legislation or other rules) in your State concerning the recognition of a domestic adoption granted previously in another State.

Once the adopted child is in the United States, recognition and validation of the adoption is subject to the laws of the adoptive parents' U.S. state of residence.

As of 2014, approximately 29 U.S. states, as well as the District of Columbia, Guam, and the Northern Mariana Islands, give full effect and recognition to an adoption decree that has been issued in full compliance with the laws of the United States and the country that granted the adoption. The word "approximately" is used because states frequently amend their laws. This information is current through June 2014. The states that provide full recognition to foreign adoption decrees, as of 2014, include Alaska, Arkansas, California, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New Mexico, Ohio, Oklahoma, Oregon, South Dakota, Texas, Utah, Vermont, Virginia, and West Virginia.

Some of these states place conditions on full effect and recognition of foreign decrees. For example, California provides full faith and credit only for adoptions finalized in Hague Convention countries. Wisconsin provides full faith and credit only for adoptions finalized in Canada or adoptions granted by a federally recognized Indian Tribe. In Hawaii and Maine, full recognition of a foreign adoption decree is discretionary for the court with jurisdiction over adoptions, while Kansas and Idaho require the foreign decree to be filed with their state courts. Massachusetts grants full recognition to foreign decrees as to inheritance matters. Illinois and Iowa require post-placement investigations to ensure that the adoptive family is meeting the child's needs.

Recognition of a foreign adoption decree means that the decree is considered by the state to be as valid and binding as a decree issued by a state court.

U.S. citizen adoptive parents may obtain immigration benefits for a child based on a domestic adoption only if they demonstrate that the adoption was not subject to the 1993 Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993 Convention). U.S. citizen adoptive parents who completed a domestic adoption in the United States of a child whose country of origin is a Convention country must demonstrate that the child was not habitually resident in the Convention country of origin at the time of the U.S. domestic adoption in order to petition for immigration benefits for the child based on the domestic adoption. U.S. citizen adoptive parents who completed a domestic adoption in the child's country of origin must demonstrate that they were habitually resident outside of the United States at the time of the foreign domestic adoption in order to petition for immigration benefits for the child based on the domestic adoption. If the U.S. citizen adoptive parents can demonstrate that the adoption was not covered by the Convention, they may petition for immigration benefits for the child based on a domestic adoption by meeting the requirements of section 101(b)(1)(E) of the Immigration and Nationality

Act (INA) and Section 204.2 of Title 8 of the Code of Federal Regulations (8 CFR), including showing two years of legal custody and joint residence with the child.

More information is available from Child Welfare Information Gateway. (2014), State recognition of intercountry adoptions finalized abroad. U.S. Department of Health and Human Services, Children's Bureau, available at <https://www.childwelfare.gov/pubPDFs/intercountry.pdf>.

In particular, please specify whether your State applies different rules to the recognition of domestic adoptions made in certain States or regions and, if so, why.

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More information is available from the Child Welfare Information Gateway. (2014). State recognition of intercountry adoptions finalized abroad. U.S. Department of Health and Human Services, Children's Bureau, available at <https://www.childwelfare.gov/pubPDFs/intercountry.pdf>.

2. Please briefly outline the **procedure** which must be followed in your State by persons seeking the recognition of a domestic adoption granted previously in another State.

Many U.S. states provide for validation of the foreign adoption or readoption of the child under state law. Validation is the process of submitting an adopted child's foreign adoption decree for state court approval. The state court must be a court that has jurisdiction over adoption cases. For more information, see Information Gateway's Court Jurisdiction and Venue for Adoption Petitions at https://www.childwelfare.gov/systemwide/laws_policies/statutes/jurisdiction.cfm. Readoption is the process of adopting a child who had been adopted in another jurisdiction. The processes are similar; both involve state court review and legitimization of the foreign adoption. The processes typically require adoptive parents to provide the court with certain documents, including a certified translated copy of the foreign adoption decree, and proof of the date and place of the adopted child's birth.

Approximately five U.S. states (Kansas, Kentucky, Louisiana, Pennsylvania, and South Carolina) and Puerto Rico require adoptive parents to either petition the court for validation or file or register the foreign adoption or foreign adoption decree. Approximately three U.S. states require adoptive parents to readopt the child under certain circumstances. California requires readoption if it is required by the U.S. Department of Homeland Security. Kentucky and Pennsylvania require readoption if the adoption was not finalized abroad properly.

Approximately 24 states and the District of Columbia offer readoption or validation as an option and not a requirement: Arizona, California, Colorado, Connecticut, Delaware, Georgia, Maine, Maryland, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Utah, West Virginia, and Wisconsin. Readoption or validation protects the adoption finalized abroad from a legal challenge in State court and ensures the adopted child's ability to inherit from an adoptive parent. Also, readoption or validation provides the adopted child with an opportunity to obtain a U.S. birth certificate from the parent's state of residence.

U.S. citizen adoptive parents who completed a domestic adoption that should have been covered by the 1993 Convention would have to annul, vacate, or otherwise terminate the adoption order or obtain a statement from a judge or competent administrative authority explaining that the family may not successfully annul or

terminate the order. The adoptive parents would then be required to complete the Convention adoption process and obtain an adoption order that complies with the 1993 Convention to obtain immigration benefits for the child.

More information is available from the Child Welfare Information Gateway. (2014). State recognition of intercountry adoptions finalized abroad. U.S. Department of Health and Human Services, Children's Bureau, available at <https://www.childwelfare.gov/pubPDFs/intercountry.pdf>.

In particular, please specify what legal or administrative steps are required for recognition.

See above.

3. What is the competent authority in your State for such matters?

State courts.

Cases which have arisen in your State

4. Has your State been asked to recognise domestic adoptions granted previously in other States? If so:

- (a) How many such cases have arisen in the past year?

The U.S. Central Authority does not have this information. Prospective adoptive parents would request recognition of a domestic adoption in the U.S. state of residence. That information is not centralized.

Past three years?

The U.S. Central Authority does not have this information. Please see answer 4(a).

- (b) In such cases, why was recognition of the domestic adoption sought?

The U.S. Central Authority does not have this information.

- (c) What type of document was presented for recognition?

The U.S. Central Authority does not have this information. In general, documents requested for recognition of foreign domestic adoptions varies from one U.S. state to another. For general information, the Child Welfare Gateway's publication available at <https://www.childwelfare.gov/pubPDFs/intercountry.pdf> compiles U.S. state requirements on recognition of foreign decrees.

- (d) Was recognition permitted?

The U.S. Central Authority does not have this information.

- (e) In cases where recognition was refused, what were the reasons?

The U.S. Central Authority does not have this information.

In particular, have there been any cases in which recognition was refused by your State on the basis that jurisdiction had been inappropriately assumed by the foreign authority?

The U.S. Central Authority is not aware of such case.

- (f) Where recognition was refused, what actions, if any, were taken with respect to the status of the child?

This information is not available to the U.S. Central Authority.

- (g) Has there been any cross-border co-operation / communication between your State and any State(s) which granted the adoption(s) in these cases?

N/A.

5. In your State's experience, do (some or many) families with an adopted child move to your State without having the child's adoption formally recognised in your State?

The U.S. Central Authority does not have this information.

Does this create any problems for the family?

N/A.

B. RECOGNITION IN ANOTHER STATE OF DOMESTIC ADOPTIONS GRANTED PREVIOUSLY IN YOUR STATE

The law and procedure in your State

6. In relation to the granting of domestic adoptions in your State:

- (a) Are any special rules or procedures followed when a case involving a domestic adoption has an international element (*e.g.*, it involves a foreign national child and / or foreign national prospective adoptive parents, despite the fact that they are all habitually resident in your State)?

Not to our awareness.

- (b) What type of document is issued for domestic adoptions granted in your State?

A state court will generally issue an order for adoption (an adoption decree) and order the competent authority responsible for issuing birth certificates (generally the bureau of vital statistics) in charge of issuing birth certificates to issue a new birth certificate with the child's new name.

7. Are there any special rules or procedures which are followed when your State is made aware that another State has been requested to recognise a domestic adoption originating from your State?

No.

Cases which have arisen involving your State

8. Are you aware of situations in which recognition has been sought in other States of domestic adoptions granted in your State?

In general, the U.S. Central Authority is not aware of issues with recognition of domestic adoptions completed in the United States. The only issue arises when the receiving country considers that the adoption should have been completed as a Convention adoption.

If so:

- (a) How many such cases have arisen in the past year of which you are aware?

The U.S. Central Authority does not have any number.

Past three years?

The U.S. Central Authority does not have any number.

- (b) Which competent authorities were addressed in your State? And in the other State(s)?

Some Central Authorities of receiving countries occasionally address the U.S. Central to understand its position on whether the 1993 Convention would apply.

- (c) In such cases, why was recognition of the domestic adoption sought?

The U.S. Central Authority does not have this information.

- (d) Was recognition permitted by the other State(s)?

The U.S. Central Authority does not have this information.

- (e) In cases where recognition was refused, what were the reasons?

The only situation that we are aware of refusal to recognize a domestic adoption arises when the foreign Central Authority considers that the prospective adoptive parents should have completed a Convention adoption instead of a domestic adoption.

Have you ever had a case where the grounds upon which your State assumed jurisdiction to grant the domestic adoption were challenged by the foreign State?

No.

- (f) Where recognition was refused, what actions, if any, were taken with respect to the status of the child?

See answer 8(e). If the foreign Central Authority requires a domestic adoption to be completed as a Convention adoption, the prospective adoptive parents may successfully demonstrate that they were habitually resident in the United States adopting a child habitually resident in the United States, and the 1993 Convention therefore did not apply. If the prospective adoptive parents are not successful in demonstrating that the 1993 Convention did not apply, the prospective adoptive parents had to follow the Convention adoption process implementing the 1993 Convention and correct deficiencies to obtain a Hague Adoption Certificate.

- (g) Has there been any cross-border co-operation / communication between your State and any State(s) being asked to recognise the adoption in these cases?

When such issues arise, the Central Authority may bring the case to the attention of the U.S. Central Authority in addition to communicating directly with the prospective adoptive parents.

C. PRACTICAL PROBLEMS REQUIRING ACTION

9. In light of the information you have provided in both sections above, overall, are there, in your State's experience, practical problems in this area that need resolving at the international level?

More outreach could be helpful to educate prospective adoptive parents on the 1993 Convention to prevent prospective adoptive parents completing a domestic adoption when the 1993 Convention applies.