

For information
on 13 May 2004

**Bills Committee on
Adoption (Amendment) Bill 2003**

**Residence Requirements for Adoption
in the relevant legislation of the United States**

Purpose

This paper provides supplementary information on the residence requirements for adoption in the relevant legislation of the United States (U.S.).

Background

2. In examining the paper on “Supplementary Information on Residence Requirements for Adoption, Adoption of Children from Places outside HK by HK residents and Escort Arrangements of Other Countries (ref : LC Paper No. CB(2)1829/03-04(01)) at the meeting on 25 March 2004, Members requested, among others, that we should provide supplementary information on whether there are residence requirements for adoption in the relevant legislation of the U.S..

3. The information presented below has been obtained primarily through the U.S. Consulate General in Hong Kong who has cited documents from the National Adoption Information Clearinghouse, the American Public Human Services Association and the U.S. Department of State. The exact interpretation should however be left to the expert opinion of the competent U.S. authorities and lawyers qualified to do so.

Residence Requirement for adoption in the relevant legislation of the U.S.

4. According to the U.S. Consulate General, the residence requirements of the parties to an adoption in the U.S. vary considerably among U.S. states. Seventeen states, Guam, Puerto Rico and the Virgin Islands require that petitioners for adoption (i.e. prospective adoptive parents) be state residents. The required period of residency ranges from 60 days to one year. However, in South Carolina and Indiana, a non-resident can adopt a special needs child; in New Mexico and Rhode Island, a non-resident may adopt through an agency. As regards the prospective adoptive children, six states and the Virgin Islands require that the child to be adopted must be present in the state at the time the petition (i.e. adoption application) is filed. Overall, the vast majority of U.S. states do not have any specific residency requirements for either the adoptee or the prospective adopter within their state adoption statutes.

Interstate Adoption for U.S.

5. The absence of residency requirements has not resulted in substantial negative public policy implications due to cooperative measures taken by U.S. states to impose a minimum standard of care on interstate adoptions. The Interstate Compact on the Placement of Children (ICPC) is the primary mechanism used to prevent adoption “forum shopping” which may result from a lack of residency requirements. ICPC is not a federal law but a uniform reciprocal state law that has been enacted in all 50 states, the District of Columbia and the Virgin Islands. It establishes orderly procedures for the interstate placement of children and fixes responsibility for those involved in placing the child. The ICPC ensures that children placed for adoption out of state receive the same protections and services that would be provided if they remained in their home states. Under this compact, the jurisdictional, administrative, and human rights obligations of all the parties involved in an interstate placement can be protected. Safeguards such as home studies or progress reports routinely available in adoptions involving only one state or jurisdiction are thus guaranteed in interstate adoptions as well.

6. Because of the uniform ICPC arrangement across states, the sending and receiving states would communicate well before any interstate placement is to take place and approval of a placement will have to be sought from the receiving state before a prospective adoptive child is actually placed there.

Intercountry Adoption for the U.S.

7. The U.S. Consulate General has advised that for international adoptions involving U.S.-citizen adoptive parents, U.S. federal law requires the prospective parents to undergo a lengthy screening process that assesses the family's ability to parent the adoptive child. The U.S. also has specific requirements regarding the status of the adoptive child, which ensure that the child is an orphan under the U.S. law or that the child has been legally and irrevocably released for emigration and adoption in a manner provided for under the local law of the foreign jurisdiction. The prospective adoptive children will then be allowed entry into the U.S. for placement. Hence, it is not possible for a U.S. citizen to simply locate a child in a foreign country and go to the U.S. embassy to apply for a visa for the child to be adopted.

8. The U.S. is also currently preparing to implement the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (the Hague Convention). The U.S. signed the Hague Convention in September 2000 and its Congress passed the Intercountry Adoption Act of 2000. It is hoped that preparations for the U.S. implementation of the Hague Convention and the Intercountry Adoption Act will permit the U.S. to ratify the Hague Convention and bring it into force in early 2006. The U.S. Government considers that the Hague Convention will enforce similar minimum standards for adoptions between party countries in the same way that the ICPC does between different U.S. states. Such cooperative measures implemented on the international level will reduce the need for residency requirements in intercountry adoptions between party countries.

Conclusion

9. While some U.S. states do not generally impose a residency requirement on the prospective adoptive parents or children for adoption, they have other measures such as ICPC to ensure that the adoption is in the best interests of the child and also remedial actions can be taken for cases not in the best interests of the child. In addition, as placement is required in the U.S., this indirectly becomes a de facto residency requirement on both the prospective adopters and adoptees.

Presentation

10. Members may wish to take note of the contents above for

information.

Health, Welfare and Food Bureau
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