

### §97.3

### 22 CFR Ch. I (4–1–10 Edition)

(b) Applicants for a Hague Adoption Certificate or Hague Custody Declaration shall submit to the Secretary:

(1) A completed application form in such form as the Secretary may prescribe, with any required fee;

(2) An official copy of the order of the adoption court finding that the child is eligible for adoption and that the adoption or proposed adoption is in the child's best interests and granting the adoption or custody for purposes of adoption;

(3) An official copy of the adoption court's findings (either in the order granting the adoption or custody for purposes of adoption or separately) verifying, in substance, that each of the requirements of §97.3 has been complied with or, if the adoption court has not verified compliance with a particular requirement in §97.3, authenticated documentation showing that such requirement nevertheless has been met and a written explanation of why the adoption court's verification of compliance with the requirement cannot be submitted; and

(4) Such additional documentation and information as the Secretary may request at the Secretary's discretion.

(c) If the applicant fails to submit all of the documentation and information required pursuant to paragraph (b)(4) of this section within 120 days of the Secretary's request, the Secretary may consider the application abandoned.

#### **§97.3 Requirements subject to verification in an outgoing Convention case.**

(a) *Preparation of child background study.* An accredited agency, temporarily accredited agency, or public domestic authority must complete or approve a child background study that includes information about the child's identity, adoptability, background, social environment, family history, medical history (including that of the child's family), and any special needs of the child.

(b) *Transmission of child data.* A U.S. authorized entity must conclude that the child is eligible for adoption and, without revealing the identity of the birth mother or the birth father if these identities may not be disclosed under applicable State law, transmit to

a foreign authorized entity the background study, proof that the necessary consents have been obtained, and the reason for its determination that the proposed placement is in the child's best interests, based on the home study and child background study and giving due consideration to the child's upbringing and his or her ethnic, religious, and cultural background.

(c) *Reasonable efforts to find domestic placement.* Reasonable efforts pursuant to 22 CFR 96.54 must be made to actively recruit and make a diligent search for prospective adoptive parent(s) to adopt the child in the United States and a timely adoptive placement in the United States not found.

(d) *Preparation and transmission of home study.* A U.S. authorized entity must receive from a foreign authorized entity a home study on the prospective adoptive parent(s) prepared in accordance with the laws of the receiving country, under the responsibility of a foreign Central Authority, foreign accredited body, or public foreign authority, that includes:

(1) Information on the prospective adoptive parent(s)' identity, eligibility, and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, and the characteristics of the children for whom they would be qualified to care;

(2) Confirmation that a competent authority has determined that the prospective adoptive parent(s) are eligible and suited to adopt and has ensured that the prospective adoptive parent(s) have been counseled as necessary; and

(3) The results of a criminal background check.

(e) *Authorization to enter.* The Central Authority or other competent authority of the receiving country must declare that the child will be authorized to enter and reside in the receiving country permanently or on the same basis as the adopting parent(s).

(f) *Consent by foreign authorized entity.* A foreign authorized entity or competent authority must declare that it consents to the adoption, if its consent is necessary under the law of the relevant foreign country for the adoption to become final.

(g) *Guardian counseling and consent.* Each person, institution, and authority (other than the child) whose consent is necessary for the adoption must be counseled as necessary and duly informed of the effects of the consent (including whether or not an adoption will terminate the legal relationship between the child and his or her family of origin); must freely give consent expressed or evidenced in writing in the required legal form without any inducement by compensation of any kind; and consent must not have been subsequently withdrawn. If the consent of the mother is required, it may be given only after the birth of the child.

(h) *Child counseling and consent.* As appropriate in light of the child's age and maturity, the child must be counseled and informed of the effects of the adoption and the child's views must be considered. If the child's consent is required, the child must also be counseled and informed of the effects of granting consent, and must freely give consent expressed or evidenced in writing in the required legal form without any inducement by compensation of any kind.

(i) *Authorized entity duties.* A U.S. authorized entity must:

(1) Ensure that the prospective adoptive parent(s) agree to the adoption;

(2) Agree, together with a foreign authorized entity, that the adoption may proceed;

(3) Take all appropriate measures to ensure that the transfer of the child takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive parent(s) or the prospective adoptive parent(s), and arrange to obtain permission for the child to leave the United States; and

(4) Arrange to keep a foreign authorized entity informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required; to return the home study and the child background study to the authorities that forwarded them if the transfer of the child does not take place; and to be consulted in the event a new placement or alternative long-term care for the child is required.

(j) *Contacts.* Unless the child is being adopted by a relative, there may be no contact between the prospective adoptive parent(s) and the child's birthparent(s) or any other person who has care of the child prior to the competent authority's determination that the prospective adoptive parent(s) are eligible and suited to adopt and the adoption court's determinations that the child is eligible for adoption, that the requirements in paragraphs (c) and (g) of this section have been met, and that an intercountry adoption is in the child's best interests, *provided that* this prohibition on contacts shall not apply if the relevant State or public domestic authority has established conditions under which such contact may occur and any such contact occurred in accordance with such conditions.

(k) *Improper financial gain.* No one may derive improper financial or other gain from an activity related to the adoption, and only costs and expenses (including reasonable professional fees of persons involved in the adoption) may be charged or paid.

**§ 97.4 Issuance of a Hague Adoption Certificate or a Hague Custody Declaration (outgoing Convention case).**

(a) Once the Convention has entered into force for the United States, the Secretary shall issue a Hague Adoption Certificate or a Hague Custody Declaration if the Secretary, in the Secretary's discretion, is satisfied that the adoption or grant of custody was made in compliance with the Convention and the IAA.

(b) If compliance with the Convention can be certified but it is not possible to certify compliance with the IAA, the Secretary personally may authorize issuance of an appropriately modified Hague Adoption Certificate or Hague Custody Declaration, in the interests of justice or to prevent grave physical harm to the child.

**§ 97.5 Certification of Hague Convention Compliance in an incoming convention case where final adoption occurs in the United States.**

(a) Once the Convention has entered into force for the United States, any person may request the Secretary to certify that a Convention adoption in