



Adoption Category Visa

Note: *An application in this category can only be made **outside** Australia.*

In Australia, the processing of intercountry adoptions is the responsibility of state and territory adoption authorities such as the Department of Family Services. These authorities manage arrangements for adopting children from overseas including assessing and approving prospective adoptive parents. The Australian Government, through the Attorney-General's Department, has the responsibility for managing existing programs and negotiating new programs with other countries.

The Department cannot provide assistance to arrange adoptions. The Department's role is to assess and decide applications for visas in accordance with the requirements of the Migration Regulations.

To be eligible for an adoption visa, the child must have been:

- Adopted (or is to be adopted) with the involvement of an Australian state or territory adoption authority (either under the Hague Convention or another adoption agreement); or
- Adopted privately by expatriate Australians who have been living overseas for more than 12 months at the time of lodging the visa application; or
- Adopted under the Hague Convention and the adoption was arranged between two Hague Convention countries other than Australia.

Relationship to Sponsor

The child must have been adopted by an "adoptive parent" or be in the process of being adopted by a "prospective adoptive parent" and be sponsored by that person.

The "adoptive parent" or "prospective adoptive parent" must be an Australian citizen or permanent resident or eligible New Zealand citizen.

An **adoptive parent** includes a person who:

- Has adopted the child under the laws of a country other than Australia and who has been **living outside Australia for the 12 months** prior to lodging the Adoption visa application; or
- Has adopted the child under the Hague Convention. The parent must possess a valid adoption compliance certificate testifying that the child has been adopted under the Hague Convention.

A **prospective adoptive parent** includes a person who:

- Has been approved by an Australian state or territory adoption authority as a suitable person to adopt the child and who intends to bring the child to Australia under the supervision of that authority – in this case, adoption will be completed in Australia; or
- Has been allocated the child for adoption under the provisions of the Hague Convention.

Further information on the different types of adoption arrangements covered by this category are provided below. If the child was adopted before the sponsor became an Australian citizen or permanent resident or eligible New Zealand citizen, they cannot apply in this category, they should apply in the child category.

Health Requirement

The child must undergo a medical examination to ensure that they meet the health criteria for entry to Australia before a visa may be granted. In the case of adoptions supported by a state or territory adoption authority the adoption cannot be finalised until the health criteria are met.

Note: *If an adoption does not proceed for health reasons, the Visa Application Charge cannot be refunded or transferred to another child.*

Age

The child must be under 18 years old.

If the child is under 18 years old at the time of application but will turn 18 years old before the application is decided, they will not be eligible for a visa under this category.

Adoptions involving an Australian state or territory adoption authority

On 1 December 1998, Australia became a party to the Hague Convention on the Protection of Children and Co-operation in respect of the InterCountry Adoption (“the Adoption Convention”).

If the child has been allocated to a prospective adoptive parent for adoption under the Adoption Convention, a letter verifying this must be provided from the Australian state or territory adoption authority which is supporting the adoption. This letter should be submitted together with the visa application.

Provided the child meets the health criteria, the adoption will take place and the relevant overseas authority will issue an “adoption compliance certificate” which certifies that the adoption meets all the requirements of the Adoption Convention. A visa cannot be granted until this certificate has been issued and a certified copy provided to the Department.

In some cases, the laws of the overseas country do not provide for full adoption and arrangements may be made for the adoption to be finalised in Australia. If this is the case, a letter from the relevant overseas authority stating that the child is allowed to travel to Australia in the care of the prospective adoptive parents for adoption in Australia must be provided to the Department.

Bilateral Agreements

Australia has bilateral agreements with countries in South America, Asia, Europe, Africa and the Pacific. Specific information on these programs can be obtained from the relevant state and territory adoption authorities.

These agreements are intended to ensure that children in overseas countries are protected from being bought or sold and to provide protection for families who wish to adopt a child from overseas (as they can be assured that the child is legally available for adoption).

Adoptions not involving an Australian state or territory adoption authority

Sometimes Australian citizens, permanent residents or eligible New Zealand citizens living overseas adopt a child while they are overseas and the adoption did not involve an Australian state or territory adoption authority. The child may have been adopted in the country in which they are living, or from another country. In this case, the parents must meet the following requirements:

- They have been living overseas for more than 12 months at the time of the visa application and they did not deliberately live overseas in order to get around the entry requirements for adopting an overseas child; and
- They have lawfully acquired full and permanent parental rights by the adoption – this means that under the laws of the child’s country, the natural parents no longer have any legal responsibility for the child.

The Department must also be satisfied that the laws relating to adoption in the country in which the child is normally resident have been complied with.

A word of caution on adoptions

- An adoption visa cannot be granted to a child who has been adopted in circumstances other than those outlined above, even if the child has been adopted lawfully in another country.
- State and territory adoption authorities will not generally support the adoption of a child who is a relative, nor a specific child where the adoption has not been arranged by that authority.

- “Full and permanent adoption” does not exist in the laws of some countries. An adoption order which does not grant full parental rights to the adoptive parents is not acceptable for the grant of a visa.
- If you wish to proceed with an adoption that has not been arranged by your state or territory adoption authority, it is strongly recommended that you first seek legal advice both in Australia and the overseas country, to ensure that the adoption can be recognised, and that the child will be eligible to enter Australia.

If you require any further information in relation to this issue, please contact David Stratton, Helen Zheng or Ryan Curtis-Griffiths.

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