

# **PREVENTIVE LAW**

## **SERIES**

### **Legal Assistance Program**

*TOPIC:*

***ADOPTION OF FILIPINO CHILDREN***

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Misawa AB, Japan**

## ADOPTION OF FILIPINO CHILDREN IN JAPAN

### I. ADOPTION OF FILIPINO CHILDREN IN GENERAL

Most people are not aware of the proper procedures for adopting Filipino children. Because of the length of such proceedings and, at times, cost, many are sometimes persuaded by unscrupulous or incompetent intermediaries to take “shortcuts” to adopt a child. Beware of such practices. There is a right way and a wrong way to adopt a Filipino child. The following is a brief synopsis of the rules for adopting a child from the Philippines. For more information please refer to the Department of State website at [http://adoption.state.gov/country\\_information/country\\_specific\\_info.php?country-select=philippines](http://adoption.state.gov/country_information/country_specific_info.php?country-select=philippines)

**A. General Information.** A revision of the Philippine Family Code, which took effect on 4 August 1988, dramatically changed the way in which Filipino children could be adopted. Basically, Filipino children cannot be adopted in a Philippine court proceeding unless by a blood relative. The **only** exception is the adoption of a child declared by a court of the Philippines to be an orphan and subsequently placed by the Philippine Department of Social Welfare and Development (DSWD) with an accredited foreign adoption agency for adoption abroad. The DSWD is the only authority legally allowed to place children for adoption.

**B. General Eligibility and Procedural Requirements for Adoption Abroad.** A child is eligible to be placed for adoption abroad only if determined to be abandoned and no local placement can be made. A DSWD assigned social worker starts the adoption process by conducting a child study for abandoned foundlings as well as for children put up for “voluntary commitment” by one of the natural parents. Local courts process petitions to declare children abandoned. When the court issues a “decree of abandonment” the DSWD takes custody of the child. The DSWD must first attempt to place the child locally. However, if it is unable to do so - and these attempts are rarely successful - the court will award custody to the DSWD and all documents, including the original birth certificate are forwarded to Manila. For overseas adoptions the DSWD handles the petitioning process in the Philippine courts on behalf of the child and the DSWD accredited agency (the one located in the state or country from which you are requesting to adopt). No Philippine attorneys are involved except in cases of domestic adoptions of Filipino children by relatives.

1. Age and Civil Status Requirement. Based on the Inter-Country Adoption Law of the Philippines (Republic Act No. 8043), the adoptive parent must be at least 27 years of age and at least 16 years older than the child to be adopted at the time of application, unless the adopter/adoptive parent is the biological parent of the child to be adopted or the spouse of such parent. The maximum age gap between the adoptive parent and the child to be adopted must not exceed 45 years. Married applicants must file jointly, and should be legally married for a minimum of three years. Single applicants will not be

refused as prospective adoptive applicants, but they will have a lower priority in being matched with children unless matched with a special needs child.

**Be aware**, as of the date of the writing of this pamphlet, the DSWD has in effect a moratorium on the release for adoption abroad, through the inter-country adoption process, of orphan children 0-2 years of age. Exceptions may be made on a case-by-case basis, for couples where at least one prospective adopting parent is of Filipino descent or in cases where a Filipino child is already present in the home.

2. Time Required for the Adoption Process. Philippine authorities advise it takes approximately one year for boys and two to three years for girls to be adopted by foreign petitioners. Domestic adoption by relatives only takes a few months. There is no time limit for adoptions to be processed by the DSWD, however the home studies are only valid for one year and must be updated prior to final processing.

3. Travel of a Philippine Child for Adoption Abroad. No child may be removed from the Philippines by any person other than the natural parent without DSWD approval. Moreover, even if the natural parent escorts the child, if the purpose of the travel abroad is adoption, DSWD approval is required. DSWD in Manila issues certifications to allow minor children to travel overseas. A social worker is stationed at the airport to examine the documents for all departing minors. DSWD has advised the American Embassy in Manila that it will oppose removal of a child unless the following conditions and arrangements are met:

- DSWD pre-screening of the placement;
- Existence of a bilateral agreement governing inter-country adoptions between the foreign country government and the Philippines (FYI: Although there is no bilateral agreement on adoption between the United States and the Philippines, the DSWD will approve adoptions arranged through licensed adoption agencies accredited by the DSWD); and
- Operational presence of an adoption agency licensed by the foreign country and accredited by the DSWD to conduct the requisite home study and conduct post placement follow-up.

## II ADOPTION OF FILIPINO CHILDREN IN PHILIPPINE COURTS BY FOREIGNERS RESIDING IN THE PHILIPPINES

U.S. citizens interested in completing a full and final adoption of a Filipino child while they are living in the Philippines must be residents of the Philippines for at least three years prior to the filing of the adoption petition, and maintain such residence until the adoption is finalized. U.S. citizens living in the Philippines do not need to possess a certificate of legal capacity to adopt. However, prospective adoptive parents must obtain a letter from the U.S. Embassy's American Citizens Services section stating that they do not issue certificates of legal capacity. Prospective adoptive parents who meet these residency

requirements should file a petition for adoption with the Philippine Court to begin the adoption process and submit the letter from the American Citizen Services in lieu of certificates of legal capacity.

The Philippine Government may waive these requirements if the prospective adoptive parent (or parents) is a former Filipino citizen who seeks to adopt a relative within the fourth degree of consanguinity as defined by Philippine law, or the prospective adoptive parent is a person who seeks to adopt the legitimate child of his/her Filipino spouse.

Qualified persons who seek legal custody of and adopt a Filipino child while they are residing in the Philippines may apply through one of the Inter-Country Adoption Board regional offices or from the national office located at #2 Chicago Corner Ermin Garcia Streets, Barangay Pinagkaisahan, Cubao, Quezon City, Philippines (tele. (011)(632) 726-4568 or (632) 721-9781. A “Final Decree of Adoption” will be issued by the court to establish the bona fide adoption. The original birth certificate will be kept in the local civil registry.

### III. RELEASE OF FILIPINO CHILDREN TO THE UNITED STATES FOR ADOPTION ABROAD

A. **General.** Persons seeking to adopt a Filipino child in the United States through the inter-country adoption process should apply through a DSWD accredited, licensed adoption agency in the United States. A list of those agencies may be found by calling the national DSWD office or by going to the Adoption – Philippines website at [http://adoption.state.gov/country\\_information/country\\_specific\\_info.php?country-select=philippines](http://adoption.state.gov/country_information/country_specific_info.php?country-select=philippines). The agencies are listed in alphabetical order and include names of agencies that serve specific states in the U.S. Note: The Department of State, the American Embassy in Manila, and the Consulate in Cebu do not endorse any of the listed agencies nor does the Misawa Air Base legal office.

B. **Initiating the Process.** Working with the accredited adoption agency, a request for a Filipino orphan child should be submitted to the national office of the DSWD. In general, to process an inter-country adoption, an U.S. citizen must be physically present outside of the Philippines. Under an authorization agreement between the agency and the DSWD, the DSWD accredited agency shall be responsible for the health, care and social well-being of the prospective adoptee for a period of at least six months from the date of placement until before the release of the child for travel abroad for the purposes of adoption.

C. **Immigration Issues.** U.S. Citizenship and Immigration Services (USCIS) nearest you early in the process - before the child has been identified and before you consider actually travelling abroad.

1. Who May Obtain a Visa. In order to meet the requirements for a U.S. immigrant visa, children adopted through the inter-country adoption process must meet

the definition of orphan under the Immigration and Nationality Act of 1952, as amended. An orphan is defined as “a child under the age of sixteen at the time a petition is filed on his behalf . . . who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption.” It should be noted that a child’s mother cannot be considered a “sole parent” when the child has a surviving natural father who has or had a bona fide parent-child relationship with the child.

It is possible that children related to a Filipino spouse by blood might not meet the definition of an orphan. Such children must be petitioned as immediate relative and therefore must have lived with and be in the legal custody of, the adopting parents for two years before a petition can be approved and a U.S. immigrant visa issued to the child. The adopting parents must also demonstrate that they have exercised parental control during that period.

2. Visa Application. To obtain a U.S. immigrant visa for your child, you must file an USCIS “Application for Advanced Processing of Orphan Petition”, Form I-600A, or a “Petition to Classify an Orphan as an Immediate Relative”, Form I-600, and comply with requirements for a home study, fingerprint check of prospective adoptive parents and any state pre-adoption requirements.

3. If You Have Other Questions. Specific questions regarding adoptions in the Philippines may be addressed to the Consular Section of the U.S. Embassy or Consulate in Manila. The Embassy’s phone number is (011)(63)(2) 521-7116. You may also contact the Office of Children’s Issues, U.S. Department of States, Room 4800 N.S., 2201 C Street, N.W., Washington, D.C. 20520-4818 (tele. (202) 647-2688) with specific adoption questions. Recorded information concerning significant changes in adoption procedures is available 24 hours a day at (202) 736-7000, or by automated fax (calling the telephone on your fax machine) at (202) 647-3000.

IV. ADOPTION OF A FILIPINO CHILD IN JAPAN. Persons residing in Japan who wish to adopt a Filipino child must process their request through a Japanese-licensed DSWD accredited adoption agency. That agency must file the request with the national office of the DSWD in Manila. You can begin this process by contacting:

Japan International Social Service (JISS)  
601 Nishimura Building, 3-6-18 Kami-Meguro  
Meguro-ku, Tokyo 153-0051  
Telephone: 03-3760-3471 Fax: 03-3760-3474

You should also immediately contact the American Embassy in Tokyo at (DSN) 224-5000 (or comm. (81) (3) 3224-5000) or the nearest American Consulate, which is in Sapporo (011-641-1115), for information about U.S. immigration requirements (see also the immigration requirements in section III C above). Issues such as waiting periods for

immigrant visas, nationality for passport purposes, etc. should be explored early on in the process, even before a child is identified for adoption. Failure to make early contact could mean that adoptive parents would inadvertently omit important requirements rendering it difficult or even impossible for the child they adopt to enter the United States.

A. The Adoptive Child's Travel to Japan. The Japanese Embassy in Manila advises that its policy regarding visas for children going to Japan for legally-regulated adoption purposes remains strict. Adoption cases are closely scrutinized prior to being submitted to Tokyo for approval. Once approval has been obtained from the Japanese Ministry of Foreign Affairs, a temporary visa would be issued and is valid for a maximum period of 90 days. This is **not** a tourist visa. The visa would be annotated with the Tokyo approval number in the lower right-hand corner of the enclosed area and the words “for adoption” or “to join/visit mother” on the purpose line. The Japanese Embassy in Manila maintains an updated information sheet describing the Japanese Visa procedures for children going to Japan for adoption. This sheet contains the current name, contact person, and address for the Philippine DSWD in Manila and the JISS in Tokyo and is in both Japanese and English. Contact the Japanese Embassy in Manila at:

Japanese Embassy  
2627 Roxas Boulevard, Pasay City, 1300  
ATTN: Consulate General  
Telephone: 011-632-551-5710

**Do not** try to arrange for the child to come to Japan as a tourist to be handed over to the adoptive parents, thinking this will save time by skipping the required DSWD procedures. A Japanese visa can only be obtained under these circumstances by misrepresentation (i.e., suggesting that the child is going to Japan as a tourist). If the Japanese visa is obtained by misrepresentation, it may not be possible to subsequently obtain a U.S. immigrant visa for the child.

B. **Adoption in Japan.** The following is a short synopsis of the steps to be aware of in completing the adoption procedures in Japan. Several other sources of information include the Adoption in Japan handout also available from Misawa's Legal Office, as well as the International Adoption – Japan pamphlet, written by the Department of State, available on the web at [http://adoption.state.gov/country\\_information/country\\_specific\\_info.php?country-select=japan](http://adoption.state.gov/country_information/country_specific_info.php?country-select=japan)

C.

1. Philippine Certificate of Competency. The Philippine Department of Foreign Affairs (DFA) advises that the Philippine Embassy in Tokyo must first issue a certificate of competency in adoption cases. The Philippine Embassy in Tokyo, in turn, requests clearance from the DFA in Manila which consults with the DSWD prior to cabling authorization or denial for a certificate of competency. Thus, adoptive parents should insist that the DFA authorization issued in Manila accompany any certificate of competency.

2. Japanese Family Court Requirements. All Japanese adoptions must comply with laws and procedures of the Japanese Family Court (Article 798, Japanese Civil Code of 1898). The Family Court Judge must be satisfied that the prospective adoption will be conducive to the welfare of the child. The Japanese Family Court Judge may require an investigation into the facts surrounding the adoption, a home study, and evidence of DSWD approval. (DSWD may require the child to be in your home for six months before it approves of the final adoption of the child. Because of this period of placement, you may also have to have the child's Japanese visa extended beyond the initial 90-day period. Extensions are obtained at the Japanese Immigration Bureau.)

3. Japanese Family Registration. Japanese law may require an adoption completed through the Japanese Family Court be registered with the civil authorities. The wording of the Court's judgment will govern whether this registration is required. In cases where the Court's judgment states that the Court has given permission for an adoption to be concluded, the adoption must be registered to have legal effect. Failure to register an adoption of this kind means the adoption does not become effective. To register a foreigner's adoption, the adopter is required to fill out a Family Registration Law Form and to attach the required documents to establish the name, age, identity and nationality of the child (passport and birth certificate) in addition to the adoption decree. Registration is normally accomplished where the adoptive parents reside.

4. Cautionary Note. We advise Americans to be careful with regard to retaining the services of agents or attorneys. Consult with the American Embassy in Tokyo or Consulate for guidance on whether any individual has been included in, or has been removed for cause from, the list we maintain of attorneys who desire to serve American clients. Prospective adopting parents are explicitly advised not to rely solely on assurance of anyone presently or formerly connected with the Honorary Philippine Consulate in Okinawa (see section VI below).

## V. A PLACED CHILD AND THE AIR FORCE

The Air Force may consider the child that you are adopting as your dependent for military identification card purposes under AFI 36-3001, *Issuing and Controlling Identification (ID) Cards*, even before the adoption is complete. You will be required to submit copies of adoption paperwork showing that a court and the DSWD have placed the child with you. In addition, to obtain medical care through a military medical treatment facility, you will have to request secretarial designee status for the child. Patient Administration at the hospital can advise you what documents are required for approval of that request under AFI 41-115, *Authorized Health Care and Health Care Benefits in the Military Health Services System*. Once the adoption is completed and the child is physically with you in Japan, the child may obtain SOFA status. Finally, some of the expenses in adopting a child may be reimbursable. See the Legal Office's handout on the reimbursement of adoption expenses program or your servicing personnel office for more information.

## VI. ANTI-FRAUD CONCERNS AND IRREGULAR ADOPTION PRACTICES

A. **Immigration.** The Department of State and the USCIS carefully screen the relationships and identities of all parties to an immigrant visa case, including an adoption, to ensure compliance with U.S. immigration law and visa regulations. The burden of proof rests squarely with the applicant to demonstrate qualification for the petition or visa. Investigations of adoptions have revolved around the identities of the child, the natural or adoptive parents, and the means by which the child was obtained. Investigations can take well over a year to complete and no visa can be issued while an investigation is ongoing. It is not unusual for the USCIS or Department of State to deny petitions or visas in cases where material fraud is discovered even where adoptions are already approved in a foreign court and the adopted child is residing with the adoptive parents. All U.S. citizens seeking to adopt foreign children are best advised to scrupulously adhere to the letter and spirit of U.S. immigration laws. Prospective adoptive parents should contact the American Embassy in Tokyo, a Consulate, or the local USCIS office early for information.

B. **Irregular Adoption Practices.** A number of military families have approached American Consulates in Japan in connection with visa applications and notarial services regarding the adoption of Filipino children in Japan. The American Consulates were unable to provide the services requested because the procedures used to adopt the children were contrary to the adoption laws of the Philippines, Japan, and U.S. immigration laws. In 1989, a large number of military families who adopted Filipino children, following the advice of the former Honorary Philippine Consul in Okinawa, found themselves at an impasse, unable to take the children to the United States. The children bore fraudulent Philippine identity documents. In many cases, the natural parents had never executed a valid relinquishment of parental rights and the children had been brought to Japan for the purposes of adoption in violation of Philippine and Japanese laws. At the time, the Departments of Defense and State and the USCIS reached an agreement to find a humanitarian solution to the problem on a one-time-only basis. The recurrence of irregular adoptions by U.S. military families is still a matter of serious concern.

C. **Implications of Fraud and Irregular Adoption Practices and Efforts to Combat Them.** The United States has been concerned for several years about the possibility that countries throughout the Americas, the Far East, and South Asia might cut-off altogether, or sharply restrict, adoption by foreign nationals. This action is permitted by international law when adoptive parents fail to take heed of host country legal requirements regarding foreign adoption. The risk is significant as many U.S. citizens fail to appreciate the position of source countries on this complex and emotional issue. The Departments of State and Defense and the USCIS are also concerned about what could be illegal baby trafficking at worst or irregular adoption practices at best between the Philippines and Japan. Such practices have serious implications for the relations between friendly governments, the welfare of the children, and the families involved. American Embassy and Consulate officials in Japan will look closely at all relative and non-relative adoptions from the Philippines and refer petitions in many cases to USCIS for investigation. U.S. authorities will continue to adhere strictly to applicable

adoption laws and regulations and to U.S. immigration laws. These procedures provide for the protection of the children concerned as well as the natural and adoptive parents.

## VII. SOURCES OF HELP

With the advent of computer technology and the internet, there are a number of websites that may prove useful in your quest to adopt. The Department of State website has information regarding adoption procedures for a number of countries.

The Philippine adoption site is located at [http://adoption.state.gov/country\\_information/country\\_specific\\_info.php?country-select=philippines](http://adoption.state.gov/country_information/country_specific_info.php?country-select=philippines) .

The Japanese adoption site is located at [http://adoption.state.gov/country\\_information/country\\_specific\\_info.php?country-select=japan](http://adoption.state.gov/country_information/country_specific_info.php?country-select=japan) .

There are also sites such as [www.adoption.org](http://www.adoption.org) that contain a lot of general information you may find helpful. While we don't endorse any of these sites or the information contained in them, you may find them a useful start in exploring all of the issues that you'll be facing as you seek to adopt a child.

**The information contained in this pamphlet is of a general nature and is provided for your assistance and convenience. It is not intended as legal advice and is not a substitute for legal counsel. If you have any questions as to how the law in this area affects you or your legal rights, contact your civilian attorney or the Misawa Air Base Legal Office for an appointment with a licensed attorney.**