

rules for adoption cases that are pending when the Convention enters into force for the United States. For immigrating children, the Convention and the IAA will not apply where a petition regarding adoption was filed with DHS before the Convention entered into force for the United States. For emigrating children, the Convention and the IAA do not apply if the prospective adoptive parent(s) have filed the appropriate application to initiate the adoption process in their country of residence before the Convention entered into force for the United States. The regulations elaborating on these IAA transition rules for Convention cases are not covered in this set of proposed regulations on accreditation and approval. Rather, the regulations for section 505(b)(1) and (2) of the IAA will be in part 97, which will cover intercountry adoption procedures and will be proposed in a future rulemaking.

IV. The Intercountry Adoption Act of 2000 (IAA)

A. Passage of the IAA

The IAA implements the Convention in the United States. In 2000, Congress considered and passed the IAA during approximately the same time period that the Senate was considering the Convention. The President transmitted the Convention to the Senate for its advice and consent on June 11, 1998. (S. Treaty Doc. 105–51 at III (1998)). The treaty was read for the first time and then transferred to the Senate Committee on Foreign Relations. To accompany the Convention, the Department, with the involvement of the INS (now part of DHS) and the Department of Health and Human Services (HHS), had drafted and transmitted to both houses of Congress proposed implementing legislation—entitled the Intercountry Adoption Act. That legislative proposal was not introduced in Congress but influenced the implementing legislation that was eventually introduced. On March 23, 1999, Senators Helms and Landrieu and other co-sponsors introduced the Intercountry Adoption Convention Implementation Act of 1999. (S. 682, 106th Cong. 1st Sess. (1999)). (A companion bill, identical to S. 682, was introduced in the House by Congressman Burr (H.R. 2342, 106th Cong. 1st Sess. (1999)). On September 22, 1999, Congressman Gilman, along with 36 co-sponsors, introduced the Intercountry Adoption Act of 1999. (H.R. 2909, 106th Cong. 1st Sess. (1999)). The Senate Foreign Relations Committee held hearings on October 5, 1999, and also issued a committee

report on S. 682 (Report of the Senate Committee on Foreign Relations on the Intercountry Adoption Act of 2000, 106th Cong. 2nd Sess., S. Rep. No. 106–276 (2000)). The House International Relations Committee held hearings on H.R. 2909 on October 29, 1999, and also issued a committee report. (Report of the House Committee on International Relations on the Intercountry Adoption Act, 106th Cong. 2nd Sess., H.R. Rep. No. 106–691 (2000)).

S. 682/H.R. 2342 and H.R. 2909 differed in some major provisions. In particular, S. 682 provided for the Department to have responsibility for oversight of the accreditation and approval process. In contrast, H.R. 2909 designated HHS as the Federal oversight agency, as proposed by the Administration. Ultimately, the Department was given the responsibility for establishing and overseeing the accreditation and approval process. A consensus was reached on other controversial issues and H.R. 2909, as amended, was passed by both the House and the Senate. It was signed by the President on October 6, 2000, and became Public Law No. 106–279.

B. Overview of Substantive Provisions

The IAA's purposes reflect and complement those of the Convention. They are: To protect the rights of, and prevent abuses against, children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention, and to ensure that such an adoption is in a child's best interests; and to improve the ability of the Federal government to assist U.S. citizens seeking to adopt children from abroad and residents of other countries party to the Convention seeking to adopt children from the United States. To accomplish these goals, the IAA provisions: (1) Set forth minimum standards and requirements for accreditation and approval; (2) make substantive changes to the Immigration and Nationality Act (INA) with respect to Convention adoptions; (3) set requirements for completing individual adoptions; and (4) confer specific responsibilities on the Department and other government entities for carrying out the mandates of the Convention and the IAA.

The IAA designates the Department as the Central Authority for the United States. As Central Authority, the Department has a number of important programmatic responsibilities, including: Acting as liaison with other Central Authorities; coordinating activities under the Convention; monitoring and facilitating individual cases involving U.S. citizens, where

necessary; and establishing and managing a Case Registry of intercountry adoptions. Some important functions related to the Convention are also vested in the Department of Justice, DHS, and State courts. The Secretary of Homeland Security will assume certain functions vested in the Attorney General and the INS by the IAA relating to the Immigration and Naturalization Service's responsibilities, pursuant to the Homeland Security Act of 2002, Public Law 107–296 (Nov. 25, 2002), as amended by section 105 of the Homeland Security Act Amendments of 2003. (See Consolidated Appropriations Resolution, Public Law 108–7, Feb. 20, 2003). The Department expects that the Attorney General will retain responsibility for enforcement of the criminal and civil penalties imposed by section 404 of the IAA. Once DHS has identified the specific bureau that will assume the functions delegated to the Attorney General or the INS under the IAA, the Department will provide that information.

Most relevant to these regulations, the IAA confers on the Department the authority and responsibility for establishing and overseeing a system for accrediting agencies and approving persons that wish to provide adoption services in Convention cases. Consistent with the Convention's acceptance of the use of private bodies, the IAA authorizes the use of accredited agencies and approved persons to complete certain case-specific Central Authority functions, rather than relying exclusively on Federal or State entities. The IAA provides detailed requirements for accreditation and approval. Rather than mandating direct Federal accreditation of agencies and persons, the IAA authorizes the Department to designate one or more accrediting entities to accredit agencies and to approve persons that meet the requirements for such entities set forth in these regulations.

The Convention and the IAA dramatically change the use of accreditation in the adoption field. Traditionally, accreditation has been a voluntary credentialing process used to encourage sound and ethical practices. Under the IAA, accreditation or approval pursuant to these regulations is now mandatory for agencies and persons that provide certain adoption services in Convention cases.

To enforce this mandatory accreditation and approval requirement, the IAA establishes civil and criminal penalties. (Pub. L. 106–279, section 404). With limited exceptions set forth in section 201(b) of the IAA and in subpart C of these regulations,