EL SALVADOR ADOPTION

DISCLAIMER: THE INFORMATION IN THIS CIRCULAR RELATING TO THE LEGAL REQUIREMENTS OF SPECIFIC FOREIGN COUNTRIES IS PROVIDED FOR GENERAL INFORMATION ONLY QUESTIONS INVOLVING INTERPRETATION OF SPECIFIC FOREIGN LAWS SHOULD BE ADDRESSED TO FOREIGN COUNSEL.

Introduction : The U.S. Embassy advises potential adopters that El Salvador"s foreign adoption law, part of the Salvadoran Family Code implemented in 1994, places limitations on the ability of prospective adoptive parents, or their attorneys, to identify a specific child for adoption and to file an adoption application for that child. The Family Code instead stipulates that a committee made up of members of the Procurador General"s office (Produradoria) and the National Institute for the Protection of Minors (INPM) will review adoption applications and decide whether a particular Salvadoran child will be considered available for adoption by the prospective parents, and whether the adopting parents are desirable parents for this child. They will also investigate whether the child has any family members in El Salvador willing to raise the child. However, it appears that in practice prospective adoptive parents may request that the Institute de Menores investigate the circumstances of a child and recommend that they be allowed to adopt it. The law also contains new requirements regarding age (25 years or older) and number of years of marriage (5 years) that foreign adoptive parents must meet.

GENERAL: At this time, U.S. citizens interested in adopting a child from El Salvador should contact the U.S. Embassy for additional information. The Supreme Court of El Salvador advises that the granting of guardianships to prospective foreign adoptive parents for the purpose of allowing children to leave El Salvador for eventual adoption abroad is prohibited. An adoption must therefore be complete and final before the Embassy can issue the child a visa. The Embassy and the Department of State stand ready to assist adoptive parents, within the limits of our authority. Reports to the U.S. Embassy or the Department of State about successes or problems with foreign adoptions are very useful and any information adoptive parents can provide in this regard is much appreciated.

AVAILABILITY OF CHILDREN FOR ADOPTION: Recent U.S. immigrant visa statistics reflect the following pattern for visa issuance to orphans:

Number of Immigrant Visas Issued to Salvadoran Orphans in Selected Years		
Fiscal Year	**IR-3 Immigrant Visas Issued to Salvadoran Orphans Adopted Abroad**	**IR-4 Immigrant Visas Issued to Salavdoran Orphans Adopted in the U.S.**
1996	17	0
1997	3	2

1998	4	8
1999	5	3
2000	5	4
2001	3	1

EL SALVADOR ADOPTION AUTHORITY :

There are several Salvadoran governmental bodies involved in the adoption process. These include the Family Courts and the Procuradoria. The Procuradoria is responsible for family welfare law in El Salvador. The Ministry of Justice oversees the Consejo de Menores (Council of Minors) which is responsible for the care of orphans and other children in government custody. Information regarding Salvadoran laws and procedures for the purposes of adoption may be obtained by contacting:

Jefe de Seccion de Adopciones
Procuradoria General de la Republica
Centro de Gobierno
San Salvador, El Salvador
tel. (503) 222-4444 or (503) 222-4133

EL SALVADOR ADOPTION PROCEDURES:

CAVEAT: U.S. citizens should ensure that the child they plan to adopt complies with the U.S. immigration law definition of an orphan. El Salvador"s laws do allow for the adoption of children who do not meet the U.S. definition of orphan and who would not qualify for subsequent immigration to the U.S.

At this time, the only legal way to take a child out of El Salvador is by first adopting the child legally in El Salvador. Under Salvadoran law, an orphan is a child whose parents have died. An adoptable child is any child surrendered by his/her natural parent(s) for adoption. Under Salvadoran law, to be eligible for adoption, a child with no identifiable parents must first be legally emancipated and represented by the Procuradoria.

The INPM can refer prospective parents to children who have already passed this stage and are living in government authorized facilities. Most adoptions are arranged with the child"s biological mother through an attorney. The INMP then investigates the circumstances of the child"s family, and seeks to find a close relative who may be willing to care of the child. Once satisfied that the adoption is in the child"s best interest, the INPM forwards the case to the Procuradoria, which determines whether the adoptive parents are a suitable match to the child. The Procuradoria and the INPM then make a final decision on whether a specific child may be adopted by a particular set of parents. The case then goes to a Salvadoran judge, who issues a final adoption decree. This decree is necessary to remove a child to a foreign country and to obtain the immigrant visa.

AGE AND CIVIL STATUS REQUIREMENTS:

Adopting parents must be 25 years of age and married for five years. There must be a minimum of 15 years age difference between the adopting parents and child. Parents adopting a child under one year of age cannot be older than 45. Single individuals may not adopt.

EL SALVADOR ADOPTION RECORDS:

El Salvador places adoption information in the margin of the child"s original birth report. This report is usually written into a bound book kept at the alcaldia (city hall). Additionally, the adoption is recorded in a separate book of adoptions in the alcaldia.

TIME FRAME:

In the past, adoptions in El Salvador have taken between 18 and 24 months to complete, including the time necessary for the U.S. Embassy to complete its own investigation, as required by immigration regulations. Unfortunately, because of the high incidence of fraud in adoption cases in El Salvador, an investigation of each adoption is necessary to ensure that the child is an orphan as defined by U.S. immigration law, and that the birth mother is aware that the child is being adopted irrevocably and will be taken from the country. Investigations generally take between two and six weeks to complete.

EL SALVADOR FEES:

Reliable information is not available at this time regarding costs for adoptions processed under the new family code. In the past adoptions cost approximately $10,000. It is useful for U.S. citizens adopting a child in El Salvador to report any exorbitant fees to the U.S. Embassy or the Department of State.

EL SALVADOR AGENCIES AND ATTORNEYS:

Salvadoran law does not permit private adoption agencies to operate in El Salvador. U.S. citizens should be wary of adoption agencies or facilitators whose promises seem too good to be true. Fraudulent activities involving adoption in El Salvador have included kidnapping and trafficking in children. One Salvadoran attorney was disbarred and his accomplices placed in custody charged with illegal child trafficking. The states of Georgia, Florida, Alabama and Massachusetts have undertaken their own investigations of adoption agencies and facilitators involved in irregular adoption practices in El Salvador.

EL SALVADOR DOCUMENTARY REQUIREMENTS:

- Power of Attorney for the Salvadoran lawyer to represent the adopting parents
- Certified birth certificate of the adopting parents
- Certified Marriage Certificate of the adopting parents

- Police clearance from the adopting parents municipality
- Documentation of the adopting parents" financial situation, (salary statements, bank accounts, etc.)
- Homestudy by an authorized agency
- Psychological report (one per adoptive parent)
- Health certificate for the adopting parents and the adopted child
- Certification issued by the Public or State Institution of Protection for the Child or the family. (All of the above-mentioned documents should be authenticated by a Salvadoran consulate or Embassy.)
- Photocopy of the identity card and certified birth certificate of the Salvadoran attorney
- Photographs of the adopting parents, adopted child, attorneys, and residence of the adopting parents.
- Hospital records of the adopted child, issued by the hospital where the child was born.
- Exact address of the biological parents

The homestudy should include general information on the applicants; their family history and social life; personal characteristics; family circumstances; reason for adopting; economic situation; and living conditions, as well as medical history. All supporting documents should be translated into Spanish.

EL SALVADOR EMBASSY AND CONSULATES IN THE U.S.:

Embassy of El Salvador
Consular Section
2308 California St. N,W,
Washington, D,C, 20008
tel: (202) 265-9671

Consulate General of El Salvador
Consular Section
2412 West 7th St., 2nd Fl.
Los Angeles, CA 90057
tel:(213) 3B3-6134

Consulate General of El Salvador
Consular Section
870 Market St., Suite 508
San Francisco, CA 94102
tel: (415) 781-7924

Consulate General of El Salvador
Consular Section
300 Biscayne Blvd, Suite 1020

Miami, FL 33131
tel: (305) 371-8B50

Consulate General of El Salvador
Consular Section
104 S. Michigan Ave., Suite 423
Chicago, IL 60603
tel: (312) 332-1393

Consulate General of El Salvador
Consular Section
1136 World Trade Center
New Orleans, LA 70130
tel:(504) 522-4266

Consulate General of El Salvador
Consular Section
46 Park Ave., 3rd Floor
New York, NY 10016
tel: (212) 889-3608

Consulate General of El Salvador
Consular Section
6420 Hillcroft street, Suite 100
Houston, TX 77081
tel: (713) 270-6239

U.S. IMMIGRATION REQUIREMENTS:

Orphans adopted abroad who have been in the legal custody of the adoptive parents fewer than two years require orphan petitions for U.S. immigrant visa processing to enter the United States.

Get Started EARLY With U.S. IMMIGRATION PROCEDURE:

Prospective adoptive parents should be aware that, whether they identify a child prior to leaving the U.S. or locate the child on a trip to El Salvador, certain very time-consuming processes will have to be completed before the required U.S. Immigration petition (either the preliminary I-600A or the final I-600 petitions) can be approved. These include, but are not limited to, satisfactory completion and submission to BCIS of a home study of the adopting parents; compliance with any state pre-adoption conditions; a fingerprint check by BCIS of the prospective parents; certified copy of prospective adoptive parents" birth certificates from the U.S. or other evidence of U.S. citizenship; certified copy of marriage certificate; and certified copy of death certificate or divorce decree reflecting termination of previous marriage (if applicable). It is therefore suggested that prospective adopting

parents get in touch with the BCIS office having jurisdiction over their place of residence in the U.S. at the earliest opportunity.

Unconditional Abandonment and Meeting the Definition of Orphan :

U.S. law provides for the immigration of children adopted overseas by Americans under section 101(B)(1)(F) of the Immigration and Nationality Act. The law states that an eligible child must be under the age of sixteen at the time the immigrant visa petition is filed. The child must have no living parents or only one living parent who is incapable of providing for the child according to local living standards and who has irrevocably released the child for emigration and adoption. A child with two living parents can meet the definition of an orphan only through the disappearance of, abandonment or desertion by, or separation or loss from both parents. Abandonment of a child must be unconditional.

Agreeing to give up a child for adoption by a specific individual does not constitute unconditional abandonment since the parents are giving up custody with the understanding that the child will be cared for and adopted by a particular individual. The Board of Immigration Appeals of the U.S. Bureau of Citizenship and Immigration Services in the Department of Homeland Security (BCIS) has ruled that a child with one surviving parent who has not been abandoned may qualify for orphan status only if the sole surviving parent is destitute **by local standards** or is otherwise physically or mentally unable to care for the child. This means that the child may not be classified as an orphan unless the sole surviving parent cannot provide the child the nourishment and shelter necessary for subsistence consistent with the local standards of the child"s residence. The parent must also irrevocably release the child for emigration and adoption. BCIS usually requires consular officers to investigate the birth parent"s purported inability to care for the child.

Consular Authority to Approve a Case:

Under the U S. Immigration and Nationality Act (INA), consular officers can only approve "clearly approvable" I-600 petitions. If there are any questions regarding the child"s eligibility for orphan status or whether petition conditions have been met, consular officers must refer these petitions to the nearest BCIS office.

Taking the Child to the U.S.:

The U S. immigrant visa petition (I-600) may be filed for the child at the U.S. Embassy in San Salvador or any BCIS office. If it is filed at the Embassy, the petitioners (or at least one of the members of a married adoptive couple) and the child must be physically present in the consular district. The I-600 is filed by one person but the petitioner"s spouse must also sign the petition. Both parents must sign the I-600 after a specific child has been identified. This means that if one parent has already gone abroad to arrange the adoption, the I-600 must be sent by the spouse in El Salvador to the spouse in the United States (generally by express courier). A power of attorney cannot be accepted in lieu of

one parent"s signature. If one spouse has not seen the child before or during the adoption proceedings, then the child must be readopted in the U.S. To do this, the petitioner must show he or she has met state pre-adoption requirements. Either BCIS will make this determination at the time the I-600A is filed or it must be established that pre-adoption requirements have been met at the time of filing the I-600 at the Embassy.

If the BCIS has already approved an I-600A (advanced processing application), the I-600 petition may be filed and adjudicated at the Embassy, if it has already received the I-600A. If advance approval has not yet been granted, the I-600 petition must be forwarded to the BCIS for adjudication. If so, as noted above, a home study, fingerprinting of the parents and proof of compliance with any state preadoption requirements will be necessary. This could require several months to complete.

Scheduling Appointments with U.S Consular Officer:

It is advisable to contact the Immigrant Visa Section of the U.S. Embassy in San Salvador at least one day in advance to ensure that the documents are in order and to set an appointment for the immigrant visa interview. The Embassy cannot guarantee issuance of the visa in advance of the interview, so parents should not make arrangements to depart the country immediately. If you are outside the USA and the child has completed his medical examination, you will have a preliminary interview with the consular officer in order to complete form I-604 "Request for a Report on Overseas Orphan Investigation." The child must be present at the Embassy for the immigrant visa application. The medical examination must be performed by a physician from an approved list of physicians using a specified form. Unless special circumstances, such as a physical handicap, indicate the child care will be particularly costly, the adopting parents will not be required to provide further proof of their financial situation, as this information will have already been provided at the time of petition (I-600A or I-600) approval. upon receipt of an approved I-600 or I-600A by the U.S. Embassy from BCIS, the Embassy sends a letter to the adopting parent(s) which describes the application procedures, outlines the possibility of an often lengthy investigation and advises the adoptive parents not to come to El Salvador until a visa appointment date has been set. Unfortunately, because of the high incidence of fraud in adoption cases in El Salvador, an investigation of each adoption is necessary to ensure that the child is an orphan under the provisions of U.S. law.

What Documents to Bring with You to U.S. Embassy:

Note: Since each case is different, it is possible that the Embassy will request additional documents after a preliminary review of the application of the prospective adoptive parent(s).

For processing the child"s immigrant visa application, the following original documents with translations are necessary:

1. Certified copy of child"s amended birth certificate.

2. Certified copy of final adoption decree registered by civil authorities (Adoption Certificate).

3. Adoption Writ. (Must include a statement to the effect that the biological parent(s) have willingly-renounced all rights to the child in the presence of a competent authority. If such a statement is not included, the document must state clearly the reasons).

4. Salvadoran passport valid for at least six months from the time of visa issuance,

5. Two recent 1 3/4 inch color visa photographs of the child.

6. Medical examination (according to Embassy instructions). If the minor has a physical or mental disability, a notarized statement will be required from the prospective adoptive parents in the United States indicating that they are fully aware of the physical or mental disability of the minor and, in spite of that fact, that they have the intention of finalizing the adoption. This statement can be included in item 19 of form I-600 and also in the home study if more convenient. In that case a separate notarized statement will not be required.

7. In cases where the minor has not been seen or observed in person by both of the prospective adoptive parents, a notarized statement by those parents will be required indicating that they are nevertheless willing to adopt or re-adopt the minor in the United States. Both parties must sign the I-600 after the child has been identified. This means that if one spouse has gone abroad to arrange the adoption, and the other remained in the U.S., the I-600 must be sent by one spouse to the other with the child"s identity information completed and returned with an original signature of the absent spouse reflecting their concurrence with the procedure. This is generally done by express courier in the interest of time.

8. Form I-134, with tax returns for the past three tax years.

9. In the case of a minor taken to the United States by only one parent or a third party, a notarized statement will be required authorizing that person to take the minor the United States for the purpose of placing him/her with the adoptive parents. This statement can also be included in the judge"s authorization for the child to leave El Salvador, Note: There are no provisions in BCIS regulations for approving petitions signed by agents with powers of attorney. Consequently, even if an agent is physically accompanying the child to the U.S., the petition itself must be signed by the adoptive parent(s), after the child has been identified.

U.S. FEES:

BCIS Fees for I-600 and I-600A Petitions: There is an BCIS fee of $525.00 for the filing of an I-600 or I-6OOA petition. If you already have a valid I-600A petition and file an I-600 within one year of the approval of the I-600A, no fee will be charged for the I-600

provided you are only petitioning for one child or for siblings. If you are petitioning for more than one child and the children are not siblings, the I-600 fee will be charged.

U.S. State Department Authentication Fee:

If you are having documents authenticated by the Department of State Authentication Office, there is a fee of $55.00 per document. You can reach the Authentication Office by phone at (202) 647-5002. El Salvador has signed the Hague Convention on the Legalization of Documents.

Medical Examination Fee :

The adopted child must have a medical examination performed by one of the U.S. Embassy"s panel physicians before the immigrant visa can be issued. The cost of this medical examination is currently 300 Salvadoran colones (approximately U.S.$38) plus tax, and must be borne by the adoptive parents. This does not include the cost of any required vaccinations.

U.S. Immigrant Visa Fee:

The fee for the immigrant visa is $325.00 and may be paid either in U.S. dollars or local currency. This $325 fee does not include the cost of medical examination, the cost of the legalization of documents or the petition fee. The U.S. Embassy does not accept personal checks or credit cards.

ADDITIONAL INFORMATION :

For additional information on adoption processing, prospective adopting parents should consult BCIS publication M-249, *The Immigration of Adopted and prospective Adoptive Children* and the Department of state information flyer *International Adoptions* .

U.S. EMBASSY ASSISTANCE:

U.S. citizens should register at the U.S. Embassy, Consular Section, American Citizens Services Unit upon arrival in El Salvador. The Embassy will be able to provide information about any current travel advisories and to provide other information about El Salvador including lists of physicians, attorneys, interpreters and translators. The U.S. Embassy is located at Final Boulevard Santa Elena, Antiguo Cuscatlan, La Libertad, El Salvador; tel: 011-503-278-4444; fax: 011-503-278-5522.

QUESTIONS: Specific questions regarding adoption in El Salvador may be addressed to the Consular Section of the U.S. Embassy or Consulate in El Salvador. You may also contact the Office of Children"s Issues, SA-29, 2201 C Street, NW, U.S. Department of State, Washington, DC 20520-2818; Phone: 1-888-407-4747; Fax: (202) 312-9743.

Information is also available **24** hours a day from several sources:

Telephone

Office of Children''s Issues - Recorded information regarding changes in adoption procedures and general information, **1-888-407-4747** .

State Department Visa Office - Recorded information concerning immigrant visas for adoptive children, **(202) 663-1225** .

Bureau of Citizenship and Immigration Services in the Department of Homeland Security - Recorded information for requesting immigrant visa application forms, **1-800-870-FORM** (3676).

Internet

The Consular Affairs web site, at: http://travel.state.gov contains international adoption information flyers and the *International Adoptions* brochure.

Other Information

Consular Information Sheets - published by the State Department and available for every country in the world, providing information such as the location of the U.S. Embassy, health conditions, political situations, and crime reports. The information is available 24 hours a day by calling the State Department"s Office of Overseas Citizens Services at **(202) 647-5225** .