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ASSESSING CUSTOMARY ADOPTIONS IN FAMILY CATEGORY APPLICATIONS

Introduction — The Visa Pak provides clarification on assessment of applications involving customary adoptions

Immigration instruction R3.1 defines 'adoption' as either a legal adoption, or an adoption by custom which has occurred at an early age within an extended family. Guidance on how to assess requirements for a customary adoption are as follows.

Evidential requirements

Immigration instruction R3.5.1 sets out evidence required to show a legal or customary adoption has taken place. For customary adoptions, R3.5.1(b) provides that a written declaration from the adoptive parents stating that the applicant has been adopted by them, the date that the adoption occurred, and in which country the adoption took place, is evidence of a customary adoption.

However, immigration officers (IOs) should not rely solely on written declarations and may request other evidence and/or information, complete AMS checks (including family members' previous applications and declarations), and consider conducting interviews where necessary to determine whether the requirements of R3.1(b) are met. This is in line with generic instructions at E7.5(a), E7.30(a)(i), R5.5(b), and R5.30(a) which allow for additional details or information to be requested.

An early age

A customary adoption must occur within an extended family and at an early age to meet the R3.1(b) definition. An early age is not defined in instructions, and it will be case dependent as to whether this requirement is met.

At a general level, an age of 10 or over would not be considered an early age for the purposes of the relevant instructions.

Demonstration that a child has been in the adopting parents' care from an early age may include the child's school or health records.

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Extended family

R3.1(b) does not include an explicit definition of extended family. Applicants must demonstrate that the adoptive and biological families are connected by blood or marriage/partnership.

The more remote a relationship is, the less likely it will be that the applicant will be able to provide evidence which would satisfy an IO that the purported customary adoption has taken place within an extended family (for example in some instances family links will be so distant, DNA testing providers may refuse to undertake testing as it would not establish any link).

Parent and child relationship

To be recognised for immigration purposes, a customary adoption must permanently transfer parental responsibility from the biological to adoptive parents. The arrangement must be more than a guardianship, custody or care arrangement. The adopting parent or parents would normally have day-to-day care of the child from the time of the adoption.

Providing financial support to a child and family members looking after them overseas does not, by itself, establish a parent-child relationship.

Customary adoption must occur in the home country

Customary adoptions must occur in the dependent child's home country (i.e. country of custom) and follow established cultural practices.

Those practices must create a new parent-child relationship and replace the parental child relationship existing at birth, rather than simply extending guardianship or custody beyond immediate family.

If an adopting parent was habitually resident in New Zealand at the time of the adoption, then it is unlikely that this would meet the standard of the adoption occurring in the child's home country.

Customary adoptions by New Zealand residents

Under the Dependent Child residence category instruction F5.1(b) a customary adoption involving a New Zealand resident may only be recognised under the Dependent Child category if:

- the customary adoption occurred before the adopting parent applied for and became a New Zealand resident: and
- the child was declared in the adopting parent's residence application.

F5.1(b) refers to the 'parents' of the child, meaning that the circumstances and application history of both parents must be reviewed and considered when assessing eligibility under this instruction. As instruction F5.1(b) requires consideration of both parents of the child, changing the supporting parent named in the child's application would still not satisfy F5.1(b) if the same circumstances remain.

Therefore, if the customary adoption took place after one parent obtained residence or the child was not declared in one parent's residence application, the customary adoption will not be recognised even if they have another parent who meets the requirements.

Temporary visas

A customary adoption assessed under temporary instruction E4.5.10 as that required for a customary adoption assessed under residence instruction R3.5.1(b). While E4.5.10 does not expressly include the additional instructions at R3.5.1(c) and (d), those factors may be relevant to IOs considering whether there has been a genuine customary adoption for temporary visa purposes. In some cases, IOs may need to request additional information to satisfy themselves that an applicant meets the customary adoption requirement to be eligible to be granted a temporary visa.