

De facto Adoption
UK Immigration Law & Practice.
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A de facto adoption is one that has already occurred through a natural process not necessarily recognised in any law. The circumstances in which a de facto adoption may arise include occasions where a person or a couple who live outside the United Kingdom for a substantial period of time, take charge of a child whom they later wish to accompany them back to the United Kingdom. This would not necessarily pose any problem if they have formally adopted the child in a 'Hague Convention' (Designated) Country. However, the situation may arise where the country in which they have adopted the child is one whose adoption orders the UK does not recognise as valid or they are caring for a child in a country which does not recognise adoption, such as a Muslim country. It may also arise even if they live in a "Hague Convention" country but they are unable to adopt there because, for example, they are not nationals of that country and so cannot meet the requirements. Adoptive parents who have only lived outside the United Kingdom for a limited period, for example, for an extended holiday, will not qualify. **Please note that recognition of a de facto adoption for Immigration purposes does not confer any legal status upon the relationship.**

Establishing that a de facto adoption has taken place

1. Prior to making the application for the entry clearance (visa) for the child in question, the adoptive parents must have been living abroad (outside the UK) (in applications involving two parents, both must have lived abroad together) for at least 18 months and
2. The 12 months immediately preceding the making of the application for entry clearance must have been spent living together with the child and
3. The adoptive parents must have assumed the role of the child's parents, since the beginning of the 12 months period, so that there must be a genuine transfer of parental responsibility. This includes responsibility for the day –to-day and other important decisions in respect of the child.

The requirement for the adoptive parents to have lived together for a minimum period of 18 months, of which the 12 months immediately preceding the making of the application for entry clearance must have been spent with the child should be interpreted flexibly where one of the parents has had to be away from the family home for some of the relevant 12 month period. So long as during the relevant 18 month period the absent parent has spent an aggregate period of 12 months living together as a family with the child, the essential requirement, that is, that both parents have bonded with the child, will have been met. The evidence required will take the form of visa stamps showing that the adoptive parents have been living abroad for at least 18 months prior to making the application, evidence of living together with the child, photographs, utility bills, tenancy agreement, nursery/school and doctor's bills for the child, bank statements of the adoptive parents, employment contract of adoptive parent (s) and their payslips, if working abroad. This must cover the whole period up to the time of making the application within a minimum of 18 months.

Also required will be evidence of assuming responsibility for the child in question, such as the important decisions made in respect of the child during the period he/she was in their care. An explanation must be given to show the circumstances leading to how the child came into their care and what role if any, the natural parents of the child has played in the child's upbringing.

The onus to establish a de facto adoption is on those who claim it. This will be very difficult to achieve where there is an absence of some legal formality or a long standing relationship. But the fact that the adoptive parents have taken over and exercised parental responsibility in respect of the child in question should be sufficient if there is clear and unambiguous evidence to support and establish the case.

The relevant requirements that apply to making an application for de facto adopted children to join or accompany their parents in the United Kingdom are found in paragraphs 309A and 310 of the Immigration Rules (as amended). In summary these are:

- That the child is seeking to join or accompany an adoptive parent in the UK and that the adoptive parent has a right of abode (British Citizen) or a settled immigration status in the UK and;
- The child in question is under the age of 18 and;
- The child is not leading in independent life and is unmarried and not formed an independent family unit and;
- The child can and will be accommodated and maintained adequately without recourse to public funds in accommodation which the adoptive parent or parents own or occupy exclusively and;
- was adopted due to the inability of the original parents and there has been a genuine transfer of parental responsibility to the adoptive parents and;
- The child has lost or broken his/her ties with his/her family of origin and;
- That the adoption is not one of convenience arranged to facilitate the child's admission to the UK.

The last three requirements are inserted into the rules to ensure that the adoptive parents are exclusively exercising parental responsibility in respect of the child and that the relationship is true and not made up to so that the child can be taken into the UK.

It is important to note that where the child is related to the adoptive parent then the possibility of qualifying under paragraph 297 (1) (f) of the Immigration Rules needs to be explored. Also, where both avenues fail, an assessment under Article 8 – Right to Family Life – of the European Convention on Human Rights can be explored.

The following questions will assist in the planning and preparation of an application under the Immigration Rules:

1. What is in the best interest of the child? The mere fact that there is an adoption order in place does not create family life but the cohabitation with the child does.
2. Have emotional bonds been created between the child and the adoptive parents? Consider how the adoptive parents meet the emotional and psychological needs of the child and how the child sees its adoptive parents.

3. Are the adoptive parents the only parent figures in the child's life? Who makes the day to day decisions as well as important decisions in the child's life?

This article does not create or intend to create a solicitor – client relationship. If you are planning on making a de facto adoption application, you are strongly advised to you the services of a solicitor. Allison Solicitors have experience of dealing with de facto adoption applications including appeals against refusal of adoption cases. For further enquiries email us at info@allisonsolicitors.com