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[Home](#) > [Home](#) > Establishing Parentage and Parental Consent for Child Visa Issuance

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# Establishing Parentage and Parental Consent for Child Visa Issuance

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When adjudicating a request to issue a foreign national child an immigrant visa to join a parent in the United States, visa officers at the U.S. Embassies and Consulates abroad are guided by volume nine of the Foreign Affairs Manual (9 FAM 42.68), which states:

If a child is immigrating to the United States with one parent and the other parent is remaining abroad, the consular officer should ask the accompanying parent whether any legal impediment might exist preventing the departure of the child. If the response is inconclusive the consular officer should defer final action on the application and direct an informal inquiry to the local authorities in an effort to learn whether a violation of local law might be involved. If so, the local authorities would probably take action to prevent the child's departure by lifting the child's travel document or by other measures. If the local authorities do not take such action within a reasonable time, the officer should proceed with the consideration of the visa application. The same procedure should be followed if the officer has reason to believe that the family of an applicant is being abandoned.

Some U.S. Embassies and Consulates have developed post-specific policies in order to comply with this regulation. Under no circumstances should a visa officer grant a child an immigrant visa if doing so would facilitate a parental kidnapping or interference with the lawful custodial rights of one of the child's parents or legal custodians.

Child custody and guardianship laws vary dramatically from country to country. In some jurisdictions, anyone named as a parent on a child's birth certificate has automatic legal custodial rights to that child, by operation of law. In other jurisdictions, the father of a child born out of wedlock must first establish legal paternity through a court of law before he can exercise custodial rights over his child, even if he is named as the father on his child's birth certificate. Some countries' laws prohibit a mother from taking her minor child abroad without the express prior consent of the child's father or some other male family member.

Because México is the country of origin of the largest immigrant population seeking lawful admission to the United States, an examination of Mexican family law may prove useful. In México, the law differentiates between physical custody (the right to reside with a child and be the child's physical caregiver) and legal custody (the right to make important decisions about the child's welfare, including granting or withholding permission for the child to relocate abroad). *Both* parents have legal rights with respect to the child regardless of whether the parents are married, or whether the father has filed a formal family law action to lawfully establish paternity. This notion of operation-of-law custodial rights is referred to as *Patria Potestad*. So, in the case of México, unless the other

parent's legal custodial rights have been formally terminated by a court or as the result of his or her death, the applicant parent must obtain the other parent's express consent prior to relocating their child to the United States. México's federal laws on la Patria Potestad are contained in Title 8, Chapter 1, Articles 411-424 of México's Federal Civil Code. [For the full text of México's federal civil code (Código Civil Federal), visit <http://www.cddhcu.gob.mx/LeyesBiblio/>.]

In general, when asking a U.S. Consulate to issue a foreign national child an immigrant visa to join one parent in the United States, the applicant parent should be prepared to demonstrate who the child's parents or legal guardians are, *and* either prove that the applicant parent has the legal right to unilaterally relocate the child or produce evidence that the child's other parent (or legal guardian) consents to the child's permanent relocation abroad. These represent the requirements for securing a child passport.

Proving the parent-child relationships is typically accomplished by submitting the child's official birth certificate naming the child's biological parents, an adoption decree bearing the adoptive parents' names, or a court order that establishes parentage or designates legal guardians for the child.

To prove that the child's *other* parent (or legal guardian) consents, the applicant parent typically produces a notarized (sworn) affidavit signed by the other parent explicitly stating that he or she authorizes the applicant parent to choose the child's country of residence or permanently relocate the child to the United States. If the child's *other* living parent (or legal guardian) retains custodial rights over the child, and does *not* consent to the child's relocation abroad, then the applicant parent will have to bring a legal action against him or her in the family court of the jurisdiction where the child is currently living. In some cases, the family court may issue a "move-away order" authorizing the applicant parent to relocate the child despite the other parent's objections.

In the event that a child has only *one* known living parent (or legal guardian), or if one of the child's parents has been awarded sole legal custody of the child, then the sole legal custodian must produce evidence of sole legal authority to determine where the child will reside (such as the child's birth certificate naming only one parent; a family court order granting sole custody; an adoption decree listing only one adoptive parent; a court order specifically authorizing the applicant parent to relocate the child; or a death certificate in the case of a deceased parent).

These immigrant visa requirements for foreign nationals seeking to bring their foreign national minor children into the United States can pose a daunting obstacle for some parents. For example, a battered immigrant woman who has fled a violent spouse or partner abroad may find the idea of contacting her child's abusive father to request move-away permission or returning in order to sue him in the foreign family court a terrifying prospect and an onerous burden. The temptation to simply smuggle the child into the U.S. or to commit passport or visa fraud to avoid confronting the other parent can be powerful, but ill-conceived.

Parental kidnapping is an extraditable criminal offense in numerous countries, and even more countries have ratified an international civil treaty on parental kidnapping, the 1980

Hague Convention on the Civil Aspects of International Child Abduction (including the U.S. and México). Not only does parental kidnapping undermine the applicant parent's chances of lawfully immigrating to the United States, the applicant also risks facing civil or criminal prosecution for parental kidnapping or custodial interference. Although most civil and criminal parental kidnapping laws and the 1980 Hague Convention have a built-in rebuttable affirmative domestic-violence defense, abuse can be difficult to document and prove in court and, if the foreign country has protective laws in place, the U.S. court may, nonetheless, elect to send the child home. The United States has taken a decisive stance against parental kidnapping – it is a federal offense, it has been criminalized in every U.S. State, and it constitutes a ground of excludability under §212(a)(10)(C) of the U.S. Immigration and Naturalization Act (INA). Unilaterally relocating a child in violation of the child's other parent's legal rights could trigger a CIS finding of poor moral character on the part of the taking parent.

For country-specific U.S. immigrant visa requirements for children following to join a parent in the United States, the visa applicant's legal advocate should directly contact the U.S. Consulate in the country where the child currently resides. The U.S. Consulate in Ciudad Juárez, México can be contacted by submitting an electronic inquiry at <http://ciudadjuarez.usconsulate.gov/feedback-form.html>, or by calling 011.52.477.788.7070 (international charges apply) or 1.900.476.1212 (a toll charge applies).

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