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ADVOCATE

Multiple Citizenship in Adoption: An Introduction

BY KAYLEE WALSH

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Those working in the field of adoption often face questions about dual or multiple citizenship. Prospective parents want to know how their adopted child will attain U.S. citizenship, if their child will have two passports, if they will one day need to choose just one citizenship, or if being or later becoming a citizen of their birth country will affect their U.S. citizenship.

- A child *may* hold two passports under U.S. law, but it also depends on the other country in question's laws and regulations about multi-citizenship.
- A child does *not* have to choose a citizenship at 18, but will have to take over his or her citizenship maintenance procedures.
- Becoming a citizen of another country will not affect U.S. citizenship in any way. The U.S. Constitution protects multi-citizenship under the 14th Amendment.
- A child *may* be able to later become a citizen of his or her birth country, but it depends on whether that country recognizes multi-citizenship, or if the child is willing to give up his or her U.S. citizenship.
- A child must be under the age of 18 to become a U.S. citizen under the Child Citizenship Act of 2000.



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- U.S. citizenship is automatically granted to adopted children once they step on U.S. soil under the Child Citizenship Act under visa type 3, so long as the adoption was full and final and completed in the birth country.

This article provides an introduction to these issues and others related to multi-citizenship in intercountry adoption.

What is Multi-Citizenship?

Multiple citizenships, sometimes known as dual citizenships, are held by those who can claim they are a citizen of more than one country (e.g., “I have a Canadian and French passport”). Under international law, the way a person can attain national citizenship varies from country to country. Different countries use different (but not necessarily mutually exclusive) criteria for citizenship. For example, in the United States, a child is a citizen if they are born to foreign-born, non-citizen parents on U.S. soil (so, if two immigrants move to America, their child born in the U.S. is a U.S. citizen). On the other hand, the same child might also be a citizen of another country if that country denotes citizenship by being born to citizens of that country (e.g., under Australian law, any child born to an Australian citizen is also an Australian). This is one way dual citizenship is created.¹

Countries also cope with recognizing multi-citizenship differently. Some countries allow it; some disavow it, and some have rules about which citizenship is binding.² Multi-citizenship was once vociferously discouraged because it led to diplomatic problems, both real and imagined. Prior to the 20th century, it was largely prohibited.³ Currently, even in some countries that permit multiple citizenships, the governments do not usually recognize the multiplicity under law.

A Brief History of Multi-Citizenship

In the past, monarchies considered nationality a sovereign concept; a person could have one citizenship, just as they could have one spouse.⁴ It was thought that the same concept of fidelity, loyalty, and conflict of interest applied to both marriage and citizenship – in other words, even an expatriate would always be loyal to their birth country. If they filed for naturalization in another country, then the birth country must renounce (or “divorce”) its citizen forever.⁵ Belonging to two countries brought up murmurs about tax evasion, conscription avoidance, and even high treason.

¹ Japanese Ministry of Justice, *The Choice of Nationality*, TOP.

² *Id.*

³ *Id.*

⁴ The Economist, *Dutchmen Grounded*, Jan. 2012.

As the world shifted, forms of governance and immigration between countries grew more prevalent. Refugees, war, and economic opportunity encouraged diaspora from mother and fatherlands abroad. Because of this, countries began to allow such multi-citizenships within the regions of Europe and Asia, and eventually between such regions and the rest of the world. This shift heralded a new age of “globalization” in the 20th and 21st centuries, contributing to the notion that national allegiance need not be all-consuming.⁶

Multi-Citizenship in the United States

The United States, among other nations, has long vacillated between supporting multi-nationality and super-nationality. Multi-citizenship laws around the world have continued to change since the start of the 20th century because of rapid global industrialization, including the ability to reach more people in different cultures through media, technology, and higher rates of travel and immigration. It is much easier to emigrate from Asia today on an airplane than it would have been aboard a steam ship. Immigration patterns have changed populations and cultures around the world, altering the approach to nationalism that was standard even just 100 years ago.

The United States is a relative newcomer to multi-citizenship, reforming its laws in the wake of World War II. U.S. citizenship law continues to change and become more nuanced. The first U.S. case to mention dual citizenship was *Talbot v. Jansen* in 1793. The case was about men in the navy living in international waters or in ports abroad. It was unusual during that time to allow multi-citizenship in the newly formed United States, but in reference to those in the navy, the Supreme Court held that a citizen in the United States could also hold the citizenship of another nation, and that merely living abroad could not be construed as expatriation or renunciation of allegiance.⁷

In 1939, the Supreme Court decided *Perkins v. Elg*.⁸ In this case, a child was born to Swedish immigrant parents in New York, and so became a citizen of the United States. Under Swedish law, he also acquired Swedish citizenship by being born to Swedish parents. The family then moved back to Sweden. The court had to decide whether American citizenship “expires” if she child did not live in the United States. The parents contested that their

⁵ David A. Martin, *Dual Nationality: TR's “Self-Evident Absurdity”*, Spring UVA Law (2005).

⁶ *Id.*

⁷ *Talbot v. Jansen*, 3 U.S. 133, 1 L. Ed. 540 (U.S.S.C. 1795).

⁸ *Perkins v. Elg*, 307 U.S. 325, 330, 59 S. Ct. 884, 888, 83 L. Ed. 1320 (1939).

child could not become “un-American” because he was living abroad, and that living abroad did not mean that he had voluntarily revoked his U.S. citizenship.⁹ The court decided that just because the boy had become an expatriate (a citizen who has also taken an oath of allegiance to another country, in this case becoming a Swedish citizen by birth and living in-country), this decision by his parents was “not intended to destroy the right of a native citizen, removed from the United States during minority, to elect to retain the citizenship acquired by birth and to return to the United States for that purpose.”¹⁰ *Perkins* is an important case because it grounded the idea that “born on American soil” creates incontrovertible U.S. citizenship. It was one of the first instances in which the court ruled on foreign-born parents and American children living abroad.ⁱ

The aspect of multi-citizenship solidified in the 1960s in *Afroyim v. Rusk*¹¹ when a statute revoked American citizenship if the citizen did not reside in the United States after a certain period of time. This was ruled unconstitutional under the Fourteenth Amendment. The Fourteenth Amendment was designed to, and does, protect every citizen against congressional forcible destruction of his citizenship.¹² In *Afroyim*, the court echoed the Constitution and held “[t]he people are sovereign, and the government cannot sever its relationship to people by taking away their citizenship.”¹³ This was the case that decided multi-citizenship was not only allowable, but protected under the United States Constitution, as “Congress has no general power, express or implied, to take away an American citizen’s citizenship without his consent.”¹⁴ This means the government has to prove that a citizen must positively and explicitly agree to lose his or her U.S. citizenship before it can be revoked.ⁱⁱ

As it relates to biological children, this situation might arise in which a U.S. citizen lives abroad and has a child abroad. Is that child a U.S. citizen? The answer is in parts. If two U.S. citizens who are legally married have a child abroad, the child is considered a U.S. citizen from birth by 301(c) of the Immigration and Nationality Act (INA). But this does not apply if the two citizens are not married. Children born out of wedlock to a U.S. parent must follow separate rules. The U.S. parent must reside and/or be present in

⁹ Civil Rights Act of 1866, 14 Stat. 27; U.S.C.A. Const. Amend. 14, § 1.

¹⁰ 8 U.S.C.A. § 17.

ⁱ See *Vance v. Terrazas*, 444 U.S. 252, 252, 100 S. Ct. 540, 541, 62 L. Ed. 2d 461 (1980).

¹¹ *Afroyim v. Rusk*, 387 U.S. 253, 257, 87 S. Ct. 1660, 1662, 18 L. Ed. 2d 757 (1967).

¹² U.S.C.A. Const. Amend. 14.

¹³ *Richards v. Sec’y of State, Dep’t of State*, 752 F.2d 1413, 1418 (9th Cir. 1985).

¹⁴ U.S.C.A. Const. Amend. 14.

ⁱⁱ See *Mandoli v. Acheson*, 344 U.S. 133, 73 S. Ct. 135, 97 L. Ed. 146 (1952) (holding that in order to establish loss of citizenship, the Government must prove an intent to surrender United States citizenship, not just the voluntary commission of an expatriating act such as swearing allegiance to a foreign nation).

the United States for five years before the age of 14, and two years after age 14, in order to confer citizenship upon his/her child. The U.S. parent must also be the biological parent of a child abroad to confer citizenship (i.e., they cannot be a step-parent, foster parent, or adoptive parent). This only applies to citizenship by birth; at any time, a child born abroad may apply for American naturalization.

The United States is tolerant of its denizens holding multiple citizenships so long as the primary citizenship is an American one. The U.S. government will recognize an American picking up a Canadian passport, or becoming a foreign national whilst living abroad. However, the United States is unenthusiastic about multi-citizenship when swearing in new citizens. The oath to become an American begins: “I hereby declare, on oath, that I absolutely and entirely *renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen*” (emphasis added).¹⁵ This language illustrates the beliefs under which it was crafted; sovereignty, treason, and the Theory of Perpetual Allegiance were the main tenements of the Naturalization Oath, which has not changed since its drafting. The State Department’s response to the questioning of such language is that it is acceptable to keep dual citizenship, which is in direct contradiction to the Naturalization Oath. Still, taking up a foreign citizenship or holding two passports is a right protected by the Constitution, “[a]nd no dual national child can be forced by American authorities to elect a single nationality upon reaching majority.”¹⁶

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Adoption and Citizenship

How does U.S. Citizenship work in intercountry adoptions?

Many questions related to adoption and citizenship can be answered by looking at the Child Citizenship Act of 2000. Enacted and effective as of February 27, 2001, some adopted children automatically become U.S. citizens upon entry into the United States because of this law. This federal law affects children who did not acquire U.S. citizenship by birth and so are granted it if they meet the conditions. At the bare minimum, the child must be adopted by at least one U.S. citizen by birth or naturalization, reside in the legal and physical custody of their citizen parent, and be under 18 years old (the age of majority). Additionally, they must fulfill the requirements of either INA 101(b)(1)(E), (F) or (G)—this in in 8 CFR 320 so you should cite that.

There are two ways in which an adopted child meets the conditions of the Child Citizenship Act.

¹⁵ U.S. Citizenship and Immigration Services, *Naturalization Oath of Allegiance to the United States of America*, 1795, at 1.

¹⁶ *Id.*

IH visas are those from a Hague country; IR visas are those from a non-Hague country. The important difference in visa types is whether the visa is a Type 3 or 4.¹⁷ Type 3 visas are generally for children who are adopted [in-country](#). Children who are under 18 automatically acquire U.S. citizenship when they enter the United States on an IH-3/IR-3 visa in order to reside in the legal and physical custody of their U.S. citizen parent(s). In such cases, USCIS automatically sends Certificates of Citizenship without requiring additional forms or fees. It is then up to adoptive parents to file for social security and obtain the new birth certificate by either a readoption or a state recognition of the foreign decree.¹⁸ Type 4 visas are generally for children traveling with their adoptive parents from their country of birth who will be adopted in the United States. IH-4/IR-4 recipients do *not* acquire U.S. citizenship upon entry into the United States, but are lawful permanent residents until the adoption is full and final. On the date that the adoption is finalized under state law, the child becomes a U.S. citizen under the Child Citizenship Act. However, the child must be under the age of eighteen when the decree is entered; and, since USCIS does not know that the family has completed the readoption, the adoptive parents will need to file the [N-600 Application for a Certificate of Citizenship](#) once they have the final U.S. adoption decree. They should also go back to the Social Security Office and let them know that their child is now a U.S. citizen once they have obtained the Certificate of Citizenship. Parents should also obtain a U.S. passport for their child.

Many of the difficult situations that lawyers see occur when the family neglects to readopt the child before their eighteenth birthday and the child's lawful permanent resident card has also expired; it then appears that the child lacks any type of immigration status. They will not be able to get a driver's license or attend college or even get a job in some situations. If that is the case, the adoptive family should consult with an experienced immigration attorney, who will most likely suggest that they apply for a replacement lawful permanent resident card for the adopted individual, and then later apply for naturalization as an adult. But each situation is different.

Adoptive parents need to file the [N-600 Application for a Certificate of Citizenship](#) once they have the final U.S. adoption decree. To sum up: If the adoption is completed overseas in a child's birth country and it is a full and final adoption, then the child will enter the United States as a U.S. citizen as of 2015. Depending on the country of birth's specific laws, he or she may have automatically renounced citizenship to the birth country. On the other hand, if an adoption is completed in the United States and becomes full and

¹⁷ United States. Department of Homeland Security. U.S. Citizenship and Immigration Services (USCIS). *Bringing Your Internationally Adopted Child to the United States: Your New Child's Immigrant Visa.*, 17 Mar. 2015.

¹⁸ U.S. Department of State. *Intercountry Adoption. US Visa For Your Child; the Hague Visa Process.*

final on U.S. soil, then the child is admitted to the country as a permanent resident and will need to file for naturalization.¹⁹

It is important to note that the Child Citizenship Act of 2000 does *not* apply retroactively.²⁰ This means that any children adopted before February 27, 2001 and/or who were over the age of 18 at the time are *not* granted automatic citizenship; they arrived as Legal Permanent Residents, and must file for U.S. naturalization from the Bureau of Citizenship and Immigration Services in the Department of Homeland Security (USCIS). The National Council For Adoption is currently educating policymakers on the need for an amendment to the Child Citizenship Act to permit citizenship for all adoptees who have legal, full and final adoptions throughout time. The pending legislation would issue U.S. birth certificates to all adult adoptees who moved to the United States before 2001.ⁱⁱⁱ

Current pending legislation would issue U.S. birth certificates to adult adoptees who moved to the United States before 2001.^{iv} Before the Child Citizenship Act of 2000 went into effect, internationally adopted children could not apply for citizenship until after they arrived in the United States. Children were granted naturalization on the basis of their parents' citizenship status. The guidelines for naturalization based on the citizenship of parents can be found on USCIS' website [here](#). If a child was adopted before the act went into effect, again, parents should seek legal advice from an experienced immigration attorney.

Because U.S. citizenship is now usually conveyed automatically during adoption (for those adoptions completed fully and finally overseas), it can create questions of whether an adopted child may or may not retain his or her original citizenship as well as U.S. citizenship. For example, if a child born abroad in China is adopted by U.S. citizens, can that child claim dual citizenship? U.S. law has grown more tolerant of multi-citizenship, but many other countries have not. Often when children are adopted by parents of another nation, their birth citizenship is automatically revoked and replaced by that of their new country – so, for example, this would

Often when children are adopted by parents of another nation, their birth citizenship is automatically revoked and replaced by that of their new country.

¹⁹ See the Child Citizenship Act of 2000:

- Joseph D'Agostino, *Equalizing the Treatment of Foreign-Born Adopted Children*, March Adopt. Adv. 1 (2011).
- [FAQ: Child Citizenship Act of 2000](#), Intercountry Adoption; Bureau of Consular Affairs; U.S. Department of State.
- *Child Citizenship Act of 2000*, Public Law Sections 320 and 322 of the Immigration and Nationality Act, Travel; Bureau of Consular Affairs; U.S. Department of State, INA Sect. 320.
- *Automatic Acquisition of Citizenship After Birth*, Public Law INA 320, Vol. 12, Citizenship & Naturalization, Part H – *Children of U.S. Citizens* (2014): Ch. 4.
- U.S. Department of Justice, *The Child Citizenship Act of 2000 Fact Sheet* (Washington, DC: Immigration and Naturalization Service, [2000]).

²⁰ U.S. Department of State, *Acquiring U.S. Citizenship For Your Child*.

ⁱⁱⁱ See S. 2275 Adoptee Citizenship Act of 2015. Retrieved from: www.congress.gov/bill/114th-congress/senate-bill/2275?q=%7B%22search%22%3A%5B%22child+citizenship+act%22%5D%7D&resultIndex=2

^{iv} See S. 2275 Adoptee Citizenship Act of 2015. Retrieved from: www.congress.gov/bill/114th-congress/senate-bill/2275?q=%7B%22search%22%3A%5B%22child+citizenship+act%22%5D%7D&resultIndex=2

mean an adopted Chinese child would *only* have American citizenship, as China does not recognize dual or multi-citizenship for its citizens.²¹

Below is a table detailing the top 30 countries adopted from in the last 20 years (1994-2014)^v in alphabetical order. The table records whether an adopted child forfeits their citizenship upon emigration to the United States with their adoptive parent(s). It also notes whether the country is open for adoption from the United States currently, and whether it is party to the Hague convention.^{vi}

Please note these statistics are correct, to the best of our knowledge, at the time of the publication of this article, but are subject to change over time. The list below is not global, it represents countries likely to be of interest to the adoption community.^{vii} Some countries listed below are no longer open for intercountry adoption to the United States. For additional information or case-specific recommendations, consult an immigration attorney or the U.S. Department of State to ensure the statistics are accurate and relevant to your situation. For further reading, please consult the State Department's [website](#) about the Child Citizenship Act of 2000.

	COUNTRY	DUAL CITIZENSHIP	HAGUE COUNTRY	OPEN
1	Belarus	NOT RECOGNIZED	YES	NO
2	Brazil	NOT RECOGNIZED	YES	YES
3	Bulgaria	RECOGNIZED	YES	YES
4	Cambodia	NOT RECOGNIZED	YES	NO
5	China	NOT RECOGNIZED	YES	YES
6	Colombia	RECOGNIZED	YES	YES
7	Congo	NOT RECOGNIZED	NO	YES
8	Ecuador	NOT RECOGNIZED	YES	NO
9	Ethiopia	NOT RECOGNIZED	NO	YES
10	Ghana	NOT RECOGNIZED	NO	YES
11	Guatemala	NOT RECOGNIZED	YES	NO
12	Guyana	NOT RECOGNIZED	NO	YES
13	Haiti	NOT RECOGNIZED	YES	YES
14	India	NOT RECOGNIZED	YES	YES
15	Jamaica	RECOGNIZED	NO	YES

²¹ United States Office of Personnel Management Investigations Service, *Citizenship Laws of the World*, March 2001.

^v Please note years 2015-2016 have not yet been recorded.

^{vi} For more in-depth analysis on the merits of each side of the Hague convention, please read our *Convention Country Question* [blog post](#).

^{vii} If your country of interest is not listed in the above table, you may consult OPM's [comprehensive report](#) on Dual Citizenship for all countries.

	COUNTRY	DUAL CITIZENSHIP	HAGUE COUNTRY	OPEN
16	Kazakhstan	NOT RECOGNIZED	YES	YES
17	Latvia	NOT RECOGNIZED	YES	YES
18	Liberia	NOT RECOGNIZED	NO	NO
19	Mexico	RECOGNIZED	YES	YES
20	Nepal	NOT RECOGNIZED	NO	YES
21	Nigeria	RECOGNIZED	NO	NO
22	Peru	RECOGNIZED	YES	YES
23	Philippines	NOT RECOGNIZED	YES	YES
24	Poland	NOT RECOGNIZED	YES	YES
25	Romania	RECOGNIZED	YES	NO
26	Russia	RECOGNIZED	NO	NO
27	South Korea	NOT RECOGNIZED	NO	YES
28	Uganda	NOT RECOGNIZED	NO	YES
29	Ukraine	NOT RECOGNIZED	NO	YES
30	Vietnam	NOT RECOGNIZED	YES	YES

Costs and Benefits of Multi-Citizenship for Your Adopted Child

Why would an adopted person benefit from dual citizenship? Many adopted children grow up as “Third Culture Kids,”^{viii} meaning they learn their culture from an outsider’s perspective. Dual citizenship can offer one way for them to cement their identities and have access to their origins.

Multi-citizenship can be both beneficial and difficult for families. Citizens who hold two passports can travel to their birth countries much more quickly and easily than mere visitors/tourists may be able to. If a family or an adopted adult is considering traveling abroad to the adopted person’s country of origin, this can save time. Moreover, an adult holding citizenship in that country “in many cases, avoids the need for a work permit, entails full protection against expulsion, enables access to public employment, decreases administrative difficulties” and is allowed to travel within the region without a visa.²²

Additionally, cultural awareness and citizenship can give an adopted person a way of belonging to more than one culture. Multi-citizenship can act “as a kind of official legitimization of their multicultural identity.”²³ In

^{viii} See “Third Culture Kids: What Is Your Child Experiencing?” on NCFA’s blog.

²² Thomas Faist and Jürgen Gerdes, *Dual Citizenship in the Age of Mobility*, at 9 (Washington, DC: Migration Policy Institute, [2008]).

²³ *Id.* at 10.

particular, children who have been adopted “can be integrated more easily if the respective state accepts or even welcomes dual citizenship” in order to encourage bilingualism, and having a transnational background.²⁴

Multi-citizenship laws reflect the way in which the world is changing. Multi-citizenship turns away from bilateral polarization (“you’re either for us or against us”) and toward synthesis and unity.²⁵ Although the chart above shows many countries disavowing it, more than half the world’s nations now tolerate some form or element of dual/multi-citizenship.²⁶ There is also a spectrum of allowance globally. Some countries, even while embracing multi-citizenship, may not allow “their emigrants full dual citizenship... [and] [i]nstead they offer a sort of ‘light citizenship’”²⁷ that may withhold rights such as voting or running for political office.

Many governments see benefits in multi-citizenship. There has been research to suggest “immigrants who do not fear losing their existing nationality are more likely to pursue naturalisation in their adopted countries—and subsequently more likely to integrate than those who maintain long-term residence as aliens.”²⁸

Less than half the countries in Africa and Asia recognize multi-citizenship, or, if they do, only have “soft citizenship” such as in India, which extends a type of Indian citizenship to immigrants abroad.²⁹ Developing countries have higher rates of emigration than countries that are considered that experience a higher rate of immigration.

There are also drawbacks to multi-citizenship. While the United States allows multi-citizenships, it is one of the few countries that taxes non-resident citizens on foreign income. For example, if an adopted adult maintains dual citizenship and moves abroad after attaining their majority, then their income is double-garnished by taxes (once by the country where he or she works, and again by the U.S. government).^{ix} If unaware that one of his citizenships created a tax liability, that country may consider the person to be a tax evader. Some U.S. expatriates have renounced U.S. citizenship in order to avoid this tax burden.³⁰

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²⁴ *Id.*

²⁵ *Id.* at 7.

²⁶ *Id.* at 3.

²⁷ *Id.* at 7.

²⁸ The Economist, *Dutchmen Grounded*, Jan. 2012.

²⁹ *Id.*

^{ix} The only other country to institute this fiscal discouragement policy is Eritrea.

³⁰ *US Taxes Abroad for Dummies*, Amer. Cit. Abroad, Feb. 6, 2016 2016, at 3.

Multi-citizenship can also be difficult or expensive to maintain. Consulates may need renewal forms or fees (depending on the country), or another measure to ensure the citizenship is maintained (such as visiting). Many of the myths about people “choosing” a citizenship upon reaching their majority stems from the fact that the adult will take over the renewal processes and maintenance of his or her second citizenship. Such responsibility and time may be unappealing or unwanted to young adults, and an adopted person may let the multi-citizenship “fade” or fail to renew.

Dual citizenship allows individuals to avoid being forced into an “either-or” bind, but they may face bureaucratic difficulties in facilitating another citizenship. The United States often wishes to escape multi-citizenship or force their citizens to choose one citizenship over the other (usually the American one). Foreign officials living abroad with U.S. citizenships must complete certain tasks, such as entering the country only on their American passport and the renewal of their passports.³¹ Renewing a foreign passport can be difficult; often a permanent address in-country is expected. Americans will also need to spend time in the United States every few years, especially in cases of having children out of wedlock, in order to establish their residency.

Conclusion

In the end, adopted people, adoptive parents, or others interested in dual and multi-citizenship should ask themselves the following questions:

1. Does the country of origin recognize multi-citizenship?
2. Is the multi-citizenship going to be useful for procedural purposes? (Traveling, taxes, working or living abroad, etc.)
3. If multi-citizenship is not recognized by the birth country, what other things might help foster a sense of cultural identity?

Multi-citizenship can be complicated, but it can also be understood by attentive, interested parents and adopted people. If a country of origin recognizes multi-citizenships, parents may wish to take advantage of dual citizenship and give their child the option of choosing whether or not to maintain their own citizenships at the appropriate age. If, however, a child is not allowed to hold multiple citizenships or retain their birth country citizenship, then parents should, as in all international adoptions, ensure their U.S. citizenship and work to ground their identity in their birth culture through other means.

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³¹ U.S. Department of State, Dual Nationality, INA §101(a)(22)(A)-(B).