**Preface**

The idea of creating a book on international adoption began for me in 1994 when I wrote an article as a law student arguing for U.S. implementation of the 1993 Hague Convention to clean up the process. At the time, I met many of the key players in the government, AILA, the American Academy of Adoption Attorneys, and at adoption agencies, who have helped work toward ratification of the Convention and draft workable regulations and guidelines.

Now, 14 years later, the United States has implemented the Hague Convention, and the Departments of Homeland Security (DHS) and State (DOS) have issued interim regulations. While any major new program initiative will cause some confusion and require some amendments in its first few years, I hope that the somewhat idealistic proposal I wrote about in 1994 will now become a reality.

The proceeds of this volume, as with all AILA publications, support all the good works of AILA, including advocacy, liaison, and education. In particular, the proceeds of this book support the wonderful work of AILA and the U.S. Committee for Refugees and Immigrants to provide representation to children in immigration court. For more information, see www.refugees.org/article.aspx?id=1260&submit=75&area=Participate& and www.aila.org/Content/default.aspx?docid=12608.

The problem with international adoptions is the major dichotomy between (1) trying to meet the needs of orphan children and U.S. prospective adoptive parents, and (2) limiting fraud and child trafficking. This is a constant theme in immigration: how do we keep the process secure while still keeping it moving? The Hague Convention is an attempt to meet these needs by requiring the sending and receiving countries to oversee every part of the adoption from the very first steps. Doing so may slow down the process some, but we hope it will stop the boom/bust cycle of adoptions that have occurred in Romania, Korea, Guatemala, Vietnam, etc.

There are still many questions to be answered, including most importantly which children are covered. As of the writing of this book, final regulations that will clarify these issues are being considered. Right now, if the prospective adoptive parent is “habitually resident” in the United States, and the prospective adoptive child is “habitually resident” in a country that is a Hague Adoption Convention partner country, then the Hague rules apply. We have included in this book some discussion of habitual residence in the adoption context and in international law, but there are many scenarios in which it is not clear whether the Hague Convention applies.
If the Hague does not apply, then the older categories of adoption under the Immigration and Nationality Act can be used. If the Hague does apply, then it precludes the earlier categories. The results of not following the Hague rules where they apply can be disastrous. Both DHS and DOS have worked very hard to provide written guidance, but some uncertainties remain.

Therefore, while this book began as an international adoption guide, we have chosen to expand it to give an overview and reference to many of the other major visa options for children, including the Violence Against Women Act, asylum, and the special immigrant juvenile category. To our knowledge, there has not been a comprehensive book on the immigration law of international adoption, or on immigration options for children. We fully expect that this book will need to be expanded and updated over the years, but we hope this will be an important first step in disseminating good information in these areas.

As a final note, we have found that working with children directly, especially when trusted adult guardians or parents are not available, presents its own set of challenges and rewards. To that end, we recommend the American Bar Association Section of Litigation DVD entitled “Interviewing the Child Client: Approaches and Techniques for a Successful Interview.” To get the free video, send a request to nationalcenter@uscridc.org.

Dan Berger
September 2008