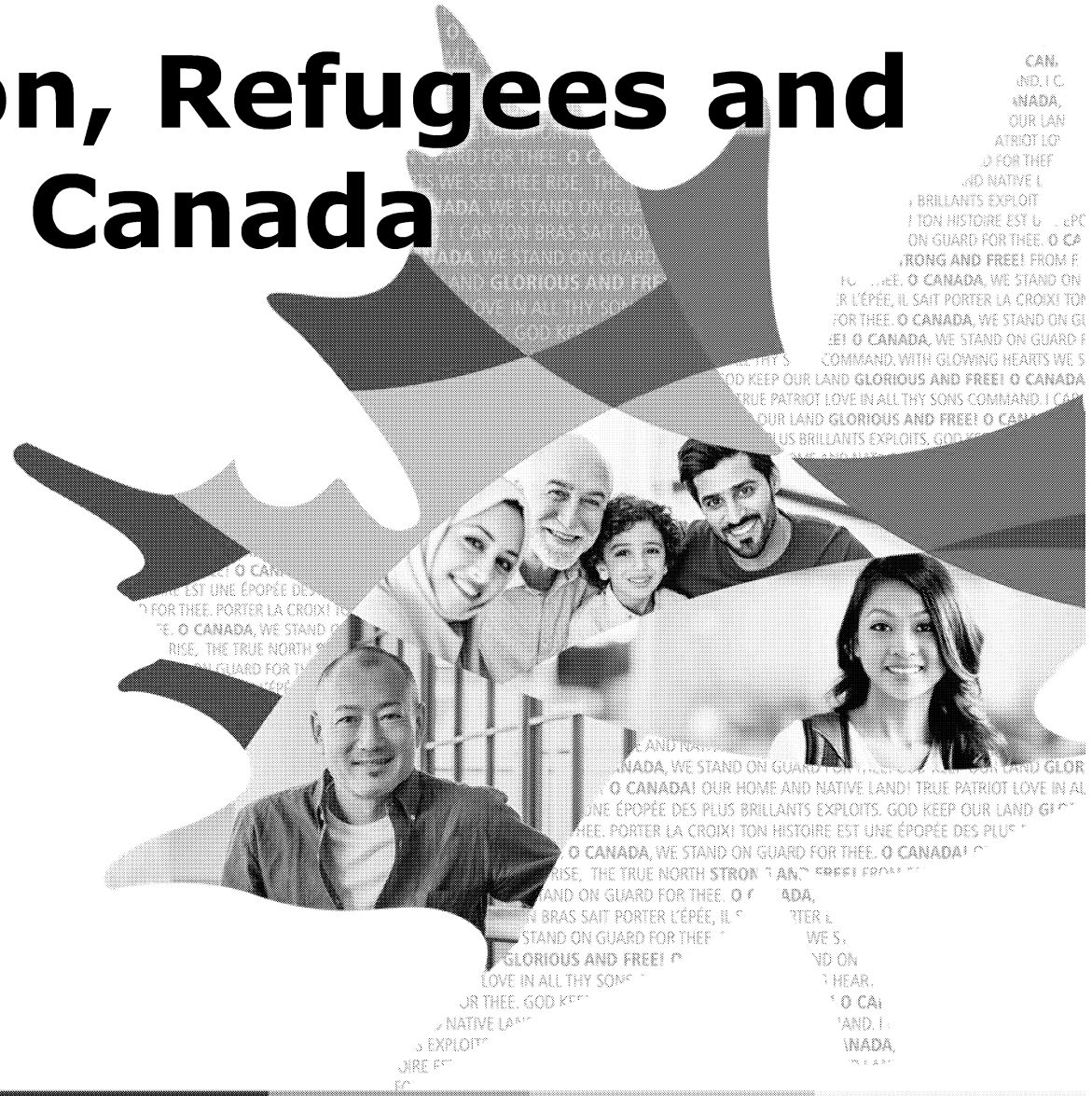


Immigration, Refugees and Citizenship Canada



CPC-M OVS APR
PM03 Adoptions
& Intro to FC5/7



Immigration, Refugees
and Citizenship Canada

Immigration, Réfugiés
et Citoyenneté Canada

Canada

R117(1)

A foreign national is a member of the Family Class if, with respect to the sponsor, the Foreign national is:

(b) a dependent child of the sponsor;

R2 - dependent child, in respect of a parent, means a child who

(a) has one of the following relationships with the parent, namely,

- (i)** is the **biological child** of the parent, if the child has not been adopted by a person other than the spouse or common-law partner of the parent, or
- (ii)** is the **adopted child** of the parent; and

(b) is in one of the following situations of dependency, namely,

- (i)** is less than 22 years of age and is not a spouse or common-law partner, or
- (ii)** is 22 years of age or older and has depended substantially on the financial support of the parent since before attaining the age of 22 years and is unable to be financially self-supporting due to a physical or mental condition. (*enfant à charge*)

ADOPTED?

FC3 - Dependent

Surrogacy or In-Vitro Fertilization

According to definition of a dependent child according to section 2 of the Immigration Refugee Protection Regulations:

Dependent child, in respect of a parent, means a child who

(a) has one of the following relationships with the parent, namely,

(i) is the **biological child** of the parent, if the child has not been adopted by a person other than the spouse or common-law partner of the parent, or

(ii) is the **adopted child** of the parent; and

(b) is in one of the following situations of dependency, namely,

(i) is **less than 22** years of age and is not a spouse or common-law partner, or

(ii) is 22 years of age or older and has depended substantially on the financial support of the parent since before attaining the age of 22 years and is unable to be **financially self-supporting due to a physical or mental condition**.

FC3 - Dependent

According to OP2, the term “biological child” has been interpreted to include children in any one of the following situations:

- was **born** to the parent making the application
- is not genetically related to the parent making the application, but was **born** to the person who, at the time of the birth of the child, was that **parent's spouse, common-law partner or conjugal partner**
- was **born through the application of assisted human reproduction technologies**

The section R2 definition allows for a child born through assisted human reproduction technologies, such as in vitro fertilization, to be recognized as a dependent child, **provided the female spouse or partner gave birth to the child and that it is consistent with Canadian family law**, under which the spouse or common-law partner of the birth parent is usually presumed to be the other legal parent even if there is no genetic relationship to the child.

FC3 - Dependent

According to OP3, a birth certificate presented in a surrogacy case may show the contracting parents as the birth parents; this is only evidence that the registration of the child's birth was made in the names of the contracting parents, not that there is any **legal, genetic or biological relationship**. There may also be a declaration from the birth mother surrendering all rights to the child in favour of the contracting parents. This is only valid as a **contractual arrangement** between those parties; it does not establish that the contracting parents have **legal custody of the child or authority to remove the child from the country of origin**.

Parents who are Canadian citizens or permanent residents may not be entitled to exclusive custody of the child and may not have the authority to remove the child from the country of origin until a court of competent jurisdiction has granted them that custody and that authority. In cases where there is **no genetic or biological link** to the Canadian intending parents, the contracting parents should **adopt** the child by following the standard procedures for international adoption: obtaining sponsorship, a home study, and a provincial or territorial no objection letter.

Caution should be used to mitigate the risk that the child was purchased or trafficked. For the suspected surrogacy or In-Vitro Fertilization (IVF) files, request **proof of pregnancy**.

Simple versus Full Adoption

Simple Adoption: parent or parents adopt(s) a child, yet their adoption does not act to sever the child's previous lines of filiation, but rather simply creates multiple, coexisting parental ties. Both the adopting parent(s) and the initial family will have legal ties to the same child

Full adoption: the new relationship between the child and the adopting parent(s) must effectively sever all initial lines of filiation between any preceding parent and that same child.

Which adoption is acceptable in Canada under R3(2)?

Adoption under 18 (FC9) – intercountry adoption, the adoptive parents' habitual residence (Canada) is different from the child's habitual residence (country of origin/birth)

R117(2)

(2) A foreign national who is the adopted child of a sponsor and **whose adoption** took place when the child was **under the age of 18** shall not be considered a member of the family class by virtue of the adoption unless

(a) the adoption was in **the best interests of the child** within the meaning of the Hague Convention on Adoption; and

(b) the adoption **was not entered into primarily for the purpose of acquiring any status or privilege under the Act.**

- ✓ **whose adoption (official court record)**
- ✓ **was not entered into primarily for the purpose of acquiring any status or privilege under the Act.**
- ✓ **the best interests of the child (R117(3))**

What is habitual residence?

Follow up question: Is habitual residence the same as R11 valid and legal status?

Best interests of the child

R117(3) The adoption referred to in subsection (2) is considered to be in the best interests of a child if it took place under the following circumstances:

- (a)** a competent authority has conducted or approved a **home study** of the adoptive parents;
- (b)** before the adoption, the child's parents gave **their free and informed consent** to the child's adoption;
- (c)** the adoption created a **genuine parent-child relationship**;
- (d)** the adoption was in accordance **with the laws of the place** where the adoption took place;
- (e)** the adoption was in accordance with the laws of the sponsor's place of residence and, if the sponsor resided in Canada at the time the adoption took place, the competent authority of the child's province of intended destination has **stated in writing that it does not object to the adoption**;
- (f)** if the adoption is an international adoption and the country in which the adoption took place and the child's province of intended destination are parties to the Hague Convention on Adoption, the competent authority of the country and of the province have **stated in writing that they approve the adoption as conforming to that Convention**; and
- (g)** if the adoption is an international adoption and either the country in which the adoption took place or the child's province of intended destination is not a party to the Hague Convention on Adoption, **there is no evidence that the adoption is for the purpose of child trafficking or undue gain within the meaning of that Convention.**

Person to be adopted in Canada (FC6) – intercountry adoption, the adoptive parents' habitual residence is the same as the child's habitual residence.

R117 (1) (g) The FN is a member of the FC if the FN is a person **under 18 years** of age whom the sponsor **intends to adopt in Canada** and if

(i) the adoption is not being entered into primarily for the purpose of acquiring any status or privilege under the Act,

(ii) where the adoption is an international adoption and the country in which the person resides and their province of intended destination are parties to the Hague Convention on Adoption, the competent authority of the country and of the province have approved the adoption in writing as conforming to that Convention, and

(iii) where the adoption is an international adoption and either the country in which the person resides or the person's province of intended destination is not a party to the Hague Convention on Adoption

(A) the person has been placed for adoption in the country in which they reside or is otherwise legally available in that country for adoption and there is no evidence that the intended adoption is for the purpose of child trafficking or undue gain within the meaning of the Hague Convention on Adoption, **and**

(B) the competent authority of the person's province of intended destination has stated in writing that it does not object to the adoption;

Adoption over 18 (FC9)

R117

(4) A foreign national **who is the adopted child** of a sponsor and whose adoption took place when the child was 18 years of age or older shall not be considered a member of the family class by virtue of that adoption unless it took place under the following circumstances:

(a) the adoption was in accordance with the laws of the place where the adoption took place and, if the sponsor resided in Canada at the time of the adoption, **the adoption was in accordance with the laws of the province where the sponsor then resided**, if any, that applied in respect of the adoption of a child 18 years of age or older;

(b) a genuine parent-child relationship existed at the time of the adoption and existed **before** the child reached the age of 18; and

(c) the adoption was not entered into primarily for the purpose of acquiring any status or privilege under the Act.

*****No BIOC or Hague Convention for adoption over 18.
Must also meet dependency reqs under R2*****

What is the difference between FC3 and FC6/9?

Follow up question: Should I be changing the FC categories from FC3/6/9?

The « competent authority? » Provinces and Territories (P/Ts) involvement

- P/T are the central authority for child welfare including adoptions (domestic and inter-country)
- P/T have their own legislation and regulations governing adoptions
- Quebec – agencies
- P/T = first contact for sponsor/adoptive parent(s)
- Moratoria/suspension/restrictions on adoptions
 - <https://www.canada.ca/en/immigration-refugees-citizenship/services/canadians/adopt-child-abroad/restrictions.html>

When **Hague Convention applies**, the central authorities of both Hague jurisdictions (P/T and other Hague country) must agree to the adoption.

In cases when the **Hague Convention does not apply**, the P/T and the immigration officer must be satisfied that the adoption is in the *spirit* of the Convention.

Letters from the Competent Authority

3 types of Letters that the P/T can issue:

1. **Notice of Agreement:** Hague Convention cases, the P/T and prospective adoptive parents agree to the adoption and the adoption conforms to the Hague Convention.
2. **Letter of No Objection:** non-Hague cases, the P/T agree to the adoption and all their requirements have been met.
3. **Letter of No Involvement:** P/T has no jurisdiction.

Which letter would be a cause for concern and why?

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**is withheld pursuant to section
est retenue en vertu de l'article**

19(1)

**of the Access to Information Act
de la Loi sur l'accès à l'information**

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What is the Hague Convention?

The Hague Convention of 29 May 1993 on Protection of Children and Co-Operation in Respect of Inter-country Adoption is an international legal instrument developed to ensure inter-country adoptions take place in the best interest of the child (BIOC) and respect the child's fundamental rights.

Key objective: establish safeguards to ensure ethical inter-country adoption practices to prevent abduction, sale of, or traffic of children.

Key principles:

- BIOC
- Subsidiarity principle
- Safeguards to protect children

Signatories – « entered into force (EIF) »

Special program field in GCMS (HAG)

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OP3 recap

- If the child is adopted by a Canadian parent, do we cancel the application in favour of a citizenship application?
- If there is a concurrent citizenship application and sponsorship application, what do we do?
- Which one of the following determines if the Hague Convention applies? The country where the child habitually resides or the country of the child's nationality?
- When is home study not required? Provide the 3 scenarios when this occurs.
- According to OP3, the first step for an FC6/9 application is to determine where the prospective adoptive parents reside. Does R130(2) apply for FC6/9? How about FC3?

Other Adoptions questions

- What court documents are required in addition to the Final Adoption Decree/Order?
- When is the Hague certificate issued? Before or after the Adoption has been completed?
- Is it always mandatory to have the PA's birth certificate with the adoptive parent(s) names on it or is it possible to have the PA's birth certificate with the biological parents names but have the court order and Hague certificate granting the SPR custody of the child?

Provincial statement

As per subsection R117(7), a letter of agreement or a letter of no objection to an adoption issued by a provincial or territorial central adoption authority is to be accepted by a visa officer as **conclusive evidence** that the requirements under paragraph R117(1)(g)(iii)(A) for a child to be adopted in Canada (FC6) or under paragraphs R117(3)(a) to (e), and (g) for an adopted child (FC9-under 18) have been met.

The letter of agreement or letter of no objection does **not** indicate whether the adoption is primarily for the purpose of obtaining status or privilege under the IRPA*. **A visa officer is responsible for making this determination** under subparagraph R117(1)(g)(i), paragraph R117(2)(b), or paragraph R117(4)(c).

****Adoption of convenience***

To note: If we have a “no-involvement” letter on file from the province, review everything carefully!

New evidence

R117(8) If, after the statement is provided to the officer, the officer receives evidence that the foreign national does not meet the applicable requirements set out in paragraph (7)(b) or (c) for becoming a member of the family class, the processing of their application shall be suspended until the officer provides that evidence to the competent authority of the province and that authority confirms or revises its statement.

In other words: If concerns exist, inform the P/T

IRPA adoptions (FC6/FC9) – other considerations

- Notification of the child's medical condition (R118) – medical condition statement
 - FC6/FC9 are **excessive demand exempt** (see A38(2)(a) / R24)
- ❖ *See table 5.4 of OP3 for summary of regulatory requirements for adoptions to be valid for immigration purposes.*

Requirement	Adoption - under 18 <u>R117(2), R117(3)</u>	Adoption - over 18 <u>R117(4)</u>	To be adopted <u>R117(1)(g)</u>	References in OP 3	Regulation
<u>Home study</u>	Yes	No	No	<u>5.4, 7.4</u>	R117(3)(a)
<u>Consent of biological parents</u>	Yes	No	No	<u>5.14</u>	R117(3)(b)
<u>Genuine parent-child relationship</u>	Yes	Yes	No	<u>5.9</u>	R117(3)(c)
<u>Adoption in accordance with the laws of the place where the adoption took place</u>	Yes	Yes	No	<u>5.7</u>	R117(3)(d)
<u>Letter of no-objection from the province/territory (non-Hague countries)</u>	Yes	No	Yes	<u>5.5, 5.6</u>	R117(1)(g)(iii)(B) R117(3)(e)
<u>Letter (Notification) of Agreement (Hague countries) from the province/territory</u>	Yes	No	Yes	<u>5.5</u>	R117(1)(g)(ii) R117(3)(f)
<u>Meet requirements or the adoption is in the spirit of Hague Convention on adoption</u>	Yes	No	Yes	<u>5.12, 6</u>	A3(3)(f)
<u>Adoption in accordance with laws of the receiving province/territory</u>	Yes	No	Yes	<u>5.11</u>	R117(3)(e) R117(4)(a)
<u>No evidence of undue gain/child trafficking</u>	Yes	No	Yes	<u>5.12</u>	R117(1)(g)(iii)(A) R117(3)(g)
<u>Not an adoption of convenience</u>	Yes	Yes	Yes	<u>5.8, 7.8</u>	R117(1)(g)(i), R117(2)(b)) R117(4)(c) R4(2)
<u>Adoptive parents have signed statement stating that they have information on child's medical condition</u>	Yes	No	Yes	<u>5.13, 7.7</u>	R118
<u>Child placed for adoption</u>	No	No	Yes*	<u>5.3</u>	R117(1)(g)(iii)(A)

FC5

R117 (f) a person whose parents are deceased, who is under 18 years of age, who is not a spouse or common-law partner and who is

- (i)** a child of the sponsor's mother or father,
- (ii)** a child of a child of the sponsor's mother or father, or
- (iii)** a child of the sponsor's child;

Translation:

Orphaned sister/brother

Orphaned niece/nephew

Orphaned granddaughter/grandson

FC7

R117 (h) a relative of the sponsor, regardless of age, if the sponsor does not have a spouse, a common-law partner, a conjugal partner, a child, a mother or father, (1) a relative who is a child of that mother or father, (2) a relative who is a child of a child of that mother or father, a mother or father of that mother or father or a (3) relative who is a child of the mother or father of that mother or father

(i) who is a Canadian citizen, Indian or permanent resident, or

(ii) whose application to enter and remain in Canada as a permanent resident the sponsor may otherwise sponsor.

Translation:
sister/brother
niece/nephew
aunt/uncle

FC5 and FC7

What is the definition of relative?

Can the PA of an FC5 or FC7 have dependent family members on the application? Which family members can they have?

FC5 – dependent child

FC7 – dependent spouse/common-law partner/child

What is the difference between guardianship and adoptions? Is Kafala an acceptable adoption? Is a guardianship necessary for FC7?

What is the role of half family members? Meaning a child/relative that is not fully the child/relative of both grandparents/parents? Does this extend to step-family?

Is RPRF a requirement for FC5/FC7?

Adoption Decision-Making Template

Step 1 - Background information - (General info):

- **Application for Citizenship**
- **Applicant Jane Smith is 24 year old divorced women, originally from Yugoslavia from Australia**
- **Canadian citizen**
- **Etc.**

Step 2 – Using the Citizenship Adoption Decision Criteria document determine which form/checklist applies to the application.

Step 3 – Using the appropriate form/checklist determine what documents are missing.

Step 4 – Using the appropriate form/checklist determine what requirements of the Act must be met.

Step 5– Using the appropriate form/checklist determine what factors must be considered to support whether the requirement of the Act are met.

Not all of these apply to all cases. Just keep in mind these points if the requirements apply to the case.

BIOC

Home Study, Consent, Child Trafficking & Undue Gain – See page 8 – 12 of the **Citizenship**

Adoption Decision Criteria document.

Genuine parent/child relationship

Full adoption and authenticity of relationships between adoptive parents and adopted child – See page 13 – 15 of the **Citizenship Adoption Decision Criteria** document.

Legality of adoption

Adoption must be legal in accordance with the laws of the place where the adoption took place and the laws of the place of residence of the adopting parent – See page 16 – 20 of the **Citizenship Adoption Decision Criteria** document.

Adoption for convenience

The primary purpose of the adoption cannot be to acquire a status or privilege in relation to immigration or citizenship – See page 21 of the **Citizenship Adoption Decision Criteria** document.

Step 6 - Assessment of evidence/facts

Important

Is all of the information needed to make a decision included?
Have you listed the information important to the client (must feel heard)

Relevant

Information must be related to the requirements of the Act and Regulations?

Factual

Information should be based on factual evidence, not assumption, not an inference, not opinion and not an error.

Step 7 – Analyze the established facts (What do the facts mean and is it significant?)

Step 8 - Conclusion of the factor – Do the facts support the requirements of the Citizenship Act?