

Visa applications for minors -LEGAL CUSTODY- Ghana

Section 46 Children's Act (Act 560) states:

"No person shall unlawfully remove a child from another person who has the lawful custody of a child."

In order to prevent child abduction, visa applications for minors have to be signed or authorized by the person(s) who has/have legal custody of the child.

WHO HAS THE CUSTODY OF A CHILD?

In Ghana both parents share the custody of a child. It does not matter whether or not they are married or live together.

Therefore, **both parents** have to sign the application form on behalf of the minor.

The signature of one parent is not sufficient unless this parent has sole custody.

It is **not** enough to state

- that one parent's whereabouts are unknown
- that there was no marriage between father and mother
- that only the father or mother or another relative takes care of the child alone and that the other parent/the parents is/are not interested in the child

since the custody **does not** automatically belong to one parent only, even though the other parent might be neglecting his or her duty.

IN CASE THE APPLICATION IS NOT SIGNED BY BOTH PARENTS OF THE MINOR, WHICH ADDITIONAL DOCUMENTS MUST BE PROVIDED?

It must be proven by adequate means that the person(s) who sign(s) the application or authorizes it has custody of the minor.

For example:

- if one parent has applied to a court for the sole custody of a child and the court has granted the application, the custody order has to be provided.
- if one parent has passed away, his or her death certificate has to be provided

Please note that custody orders will have to fulfill certain requirements to be acknowledged under German Law and may not be accepted if they lack these requirements.

WHAT ARE THE REQUIREMENTS FOR ACKNOWLEDGEMENT OF CUSTODY ORDERS?

- The custody order must be rendered according to the Children's Act of Ghana of 1998.
- In order to meet the requirements of sections 43 and 45 of the Children's Act of Ghana of 1998, the custody order has to show that the best interest of the child has been considered. The consideration by the court must be reflected in the custody order.
- It is essential that the child is heard by the court and has the opportunity to give his/her view. This has to be proven by documentary evidence in the custody order. In case that the child was not heard by the court, this can only be accepted for substantial reasons, which need to be explained in the custody order. The hearing of the child can also be replaced by a report from the Social Welfare Department. The custody order has to contain details regarding this report as well.
- Likewise, it has to show that both parents were heard. In case that one parent was not heard by the court, the court must explain the important reasons for this. In case that the whereabouts of one parent are unknown, the Custody Order needs to show which measures were taken in order to find the parent.

If the custody order does not meet these requirements, it cannot be accepted by the German law sector.