

Adoption and Immigration 101

Presented by Gretchen Korb-Nice

July 20, 2016

- I. Family Petitions under INA §101(b)(1)(E)
 - a. Family Petitions for already adopted children
 - b. INA §101(b)(1)(E)
 - i. Unmarried person under 21 whose adoption was finalized before 16 and who was in the legal and physical custody of the adopting parent for 2 years
 - c. Eligibility of adoptee
 - i. Adoption must be finalized before 16
 - ii. Exception: if family has already adopted a sibling, second brother or sister may be under 18 at the time of adoption
 - iii. Child does not need to be an orphan
 - d. Petitioner may be single/married USC or LPR
 - e. Adoption must be valid (AFM 21.15(b))
 - i. Valid under the law of the country of place granting the order;
 - ii. Creates a legal permanent parent-child relationship between a child and someone who is not already the child's legal parent; and
 - iii. It terminates the legal parent-child relationship with the prior legal parent(s).
 - f. I-130 Process
 - i. Physical and legal custody of the child for two years
 - ii. Evidentiary suggestions
 - iii. Bona fides of underlying adoption
 - g. Citizenship
 - i. If INA §101(b)(1)(E) is satisfied and the child is a LPR, then citizenship is automatic
 - ii. Certificate of Citizenship
 - iii. Where child is 18 before becoming LPR, will need to file N-400 after 5 years
 - h. *Matter of Huang*, 26 I&N Dec. 627 (BIA 2015) and *Nunc Pro Tunc*
 - i. Practice Pointers
 - i. When to file I-130
 - ii. Overstays
 - iii. Adoptees of LPRs and visa bulletin
- II. Orphan adoptions
 - a. INA §101(b)(1)(F)
 - b. "Orphan" definition
 - i. Orphan is defined as "(1) by reason of death, disappearance, abandonment and/or desertion, separation, or loss of both parents or (2) the fact that the sole or surviving parent is incapable of providing proper care for the child

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and has irrevocably released parental rights to the child in writing for ‘emigration and adoption’.”

- ii. Child must be under 16 at time of filing I-600
 - 1. Same exception for siblings
- iii. Child must be inspected and admitted
- c. Eligibility of prospective adoptive parents
 - i. Petitioner must be USC and, if married, spouse must be LPR/USC
 - ii. Petitioner must be at least 25 years old
 - iii. Home study required
 - iv. No residency/custody requirement
- d. Process
 - i. Option of filing the I-600A, application for advanced processing, prior to match
 - ii. Once adoption decree is issued by the court, Petitioner files I-600
 - iii. Petitioners obtain immigrant visa from US consulate
 - iv. For IR-3, optional re-adoption in the US
 - v. For IR-4, adoption finalization in the US
- e. Citizenship
 - i. If enter on IR-3, child becomes a USC upon entering the US
 - ii. If enter on IR-4, a US court must issue a final decree of adoption before child becomes a USC
- f. Practice Pointers
 - i. Biological parents receive no immigration benefits
 - ii. Not available for children already in the U.S., but a parolee may be eligible (8 CFR §204.3 (k)(3))
 - iii. Opportunities for representation

III. Hague Convention Adoptions

- a. Agreement designed to govern the adoption process and protect children being adopted across national boundaries
 - i. Purpose: to strengthen protections and ensure best interest of the children
 - ii. Entered into force on **April 1, 2008**
 - iii. Governs both incoming and outgoing adoptions between the US and Hague Convention countries
- b. INA §101(b)(1)(G)
- c. Initial analysis to determine if “Convention case”
 - i. List of countries that have ratified the Agreement:
<https://travel.state.gov/content/adoptionsabroad/en/hague-convention/convention-countries.html>
 - ii. Status of countries:
<https://www.hcch.net/en/instruments/conventions/status-table/?cid=69>

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- iii. Habitually resident Petitioner and child
- d. Eligibility of Prospective Adoptive Parent
 - i. Only USC Petitioners (OK if spouse is LPR)
 - ii. Petitioners must be 25 years old or older
 - iii. Habitually reside in the US
 - iv. Home study required
 - v. Prohibited from any contact with the child's bio parents
 - 1. Exception: relative petitions (8 CFR §204.309(b)(2)(iii))
- e. Eligibility of Child
 - i. I-800 must be filed before the child is 16
 - 1. No sibling exception
 - ii. Child must be habitually resident in a Convention country
 - iii. Central Authority determines that the child is eligible to be adopted, that it is in the child's best interest to be adopted internationally, and that all consents are valid and in writing
 - iv. Child does not need to be an orphan
- f. Process
 - i. File I-800A with the home study
 - ii. Central Authority receives approved I-800A and refers the child to the family
 - iii. If family accepts the referral, file I-800 with supporting evidence
 - iv. Provisionally approved I-800 is forwarded to the DOS officer at the visa issuing post
 - v. Petitioner files visa application for the child at the consulate
 - vi. Consular officer notifies the Central Authority of "Article Five Determination" and the Central Authority then authorizes adoption/guardianship
 - vii. Petitioner proceeds with adoption (child must be adopted abroad)
 - viii. Petitioner takes Decree to consular officer who verifies that it is Convention compliant and issues the visa
- g. Citizenship
 - i. If there is a final decree of adoption (IH-3), the child will become a USC on admission to the US as a LPR
 - ii. When child enters on IH-4, the adoption must be finalized with a U.S. state court in order for child to become a USC under CCA 2000. Then, the child files the N-600 for a Certificate of Citizenship.
- h. Practice Pointers
 - i. Not available for PAP with NI status or for LPRs
 - ii. Attorneys cannot provide "adoption services"
 - iii. Communicate with the Central Authority
 - iv. Certificate of Citizenship and U.S. state birth certificate

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- IV. Alternative Strategies
 - a. Special Immigrant Juvenile Status
 - i. Available for children under 21 (but note state rules)
 - ii. Children who obtain LPR status as SIJ are eligible for automatic citizenship if they are adopted by at least one USC and file a N-600
 - iii. Must have 2 years physical/legal custody
 - b. VAWA
 - c. Asylum
 - d. F-1
 - e. B-1/B-2
 - f. Humanitarian Parole

- V. Final Practice Pointers
 - a. Child Citizenship Act of 2000
 - b. Immigration benefits for bio family prohibited
 - c. U.S. Court Jurisdiction
 - d. Issue spotting for Hague Convention cases