



# *The* **Immigration of**

**Adopted and**

**Prospective**

**Adoptive**

**Children**



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## INTRODUCTION

# Introduction

**T**he purpose of this publication is to explain immigration benefits that may be obtained through adoptive relationships. This information is intended for adoptive and prospective adoptive parents of foreign-born children. It may also be of interest to adoption agencies as well as state and local officials involved in adoption proceedings.

Orphan petitions are the most common way of bringing foreign adopted and prospective adoptive children to the United States. Consequently, most of the information presented here is about the orphan petition. Basic orphan petition procedures are explained fully. Information is also included on some difficult issues that sometimes occur in orphan cases. These materials are comprehensive and meant for readers who want to avoid problems and/or delays in the adoption process.

These materials feature a section on immigration benefits that may be gained from adoptive relationships through procedures other than the orphan petition. There is also some general information on how a foreign-born adopted child can become a U.S. citizen.

Above all, these materials alert prospective adoptive parents about some serious problems that may happen in foreign adoption cases. For example, unscrupulous adoption practices are common in many areas of the world. Moreover, adoption of a foreign-born child does not guarantee the child's eligibility to immigrate to the United States. The adoptive parent must comply with the U.S. immigration law and legal regulatory procedures. There is no way an orphan can legally immigrate to the United States without Immigration and Naturalization Service (INS) processing.

INS regulations require that all foreign adoptions undergo an investigation to guarantee compliance with the laws of both the United States and foreign sending country. When necessary, an overseas investigation is initiated. This investigation can cause delays in adjudicating the case. Prospective adoptive parents are advised to retain a reputable agency with foreign adoption experience or competent legal representation in their efforts to bring foreign-born children to the United States.

INS places a priority on processing adoption petitions. Many INS field offices have assigned individual officers and clerks to process orphan petitions and respond to inquiries from the petitioners concerning the status of their case. Prospective adoptive parents are encouraged to go through their adoption agencies for guidance and insight on the immigration of orphan and adopted children.

The U.S. Department of State's Office of Children's Issues coordinates policy and provides information to the public on international adoptions, including country-specific data. Prospective adoptive parents can contact the Office of Children's Issues at (202)736-7000. Adoption information is also available on the State Department internet website at <http://travel.state.gov>.



## ADVANCE PROCESSING AT A GLANCE

# The Fastest Way

### THE FASTEST WAY

#### How to Start

1. File advance processing application before a child has been identified.
2. Locate a child to adopt who can be classified as an orphan according to the U.S. immigration law.\*
3. File an orphan petition on behalf of the child.

#### Forms and Documents

##### Advance Processing

1. **Form I-600A, Application for Advance Processing of Orphan Petition.** The purpose of this application is to complete the part of the process relating to the prospective petitioner before a child is identified.
2. Proof of the prospective petitioner's U.S. citizenship, and if the petitioner is married and residing in the United States, proof of the spouse's U.S. citizenship or lawful immigration status.
3. Fingerprints for each prospective adoptive parent and each adult member of the prospective adoptive parents' household on Form FD-258. If the prospective adoptive parent(s) are in the United States, INS will schedule fingerprinting appointments after receiving the application. If the prospective adoptive parent(s) are abroad, fingerprints may be taken at a U.S. embassy, consulate, U.S. military installation or INS office. A complete definition of "adult member" can be found in Appendix B.
4. Proof of the marriage of the prospective petitioner and spouse, if married.
5. Proof of the legal termination of any prior marriages of the prospective petitioner and spouse or unmarried prospective petitioner, if applicable.
6. Proof of compliance with preadoption requirements, if any, of the state of the child's proposed residence.
7. A favorably recommended home study that meets the requirements outlined in Section III, D of this publication. The home study must be submitted within one year of the filing of the advanced processing application.
8. Required filing fee.

##### Orphan Petition \*\*

1. **Form I-600, Petition to Classify Orphan as an Immediate Relative.**
2. Proof of approval of the I-600A.
3. Proof of the child's age and identity.
4. Proof that the child is an orphan as appropriate:
  - a. proof that the child has been abandoned or deserted by, separated or lost from, both parents or that both parents have disappeared or died;
  - b. death certificate(s) of the child's parent(s), if applicable;
  - c. proof that the child's sole or surviving parent cannot give the child proper care and has, in writing, irrevocably released the child for emigration and adoption;
  - d. proof that the child has been unconditionally abandoned to an orphanage, if the child is in an orphanage.
5. If there was **no adoption abroad**, proof that the preadoption requirements, if any, of the state of the child's proposed residence have been met. This is also required if the child has been adopted abroad, but the adoption is not full and final, or if the unmarried adoptive parent, or **both** married adoptive parents, did not personally see the child prior to or during the adoption proceedings.
6. If there was no adoption abroad, proof that the prospective adoptive parent(s) have, or a person or entity working on behalf of the parent(s) has, **legal custody** of the child for emigration and adoption in the United States.
7. If the child was **adopted abroad**, a final decree of adoption must be submitted. For the adoption to be recognized as full and final, proof must be submitted verifying that the unmarried adoptive parent, or **both** married adoptive parents, saw the child prior to or during adoption proceedings. If only one married adoptive parent or no adoptive parent saw the child, procedures outlined in number 5 above must then be followed.

\* The U.S. immigration law refers to Section 101(b)(1)(F) of the Immigration and Nationality Act.

\*\* If the I-600 is filed while an advance processing application is **pending** or **within 18 months after** a favorable decision in a completed advance processing case, no new filing fee is required.

# ORPHAN PROCESSING AT A GLANCE

# The Other Way

## THE OTHER WAY

### How to Start

1. Locate a child to adopt who can be classified as an orphan according to the U.S. immigration law.
2. File an orphan petition in behalf of the orphan.

### Forms and Documents

1. **Form I-600, Petition to Classify Orphan as an Immediate Relative.**
2. Fingerprints for each adoptive or prospective adoptive parent and each adult member of the adoptive or prospective adoptive parents' household on Form FD-258. If the adoptive or prospective adoptive parent(s) are in the United States, INS will schedule fingerprinting appointments after receiving the application. If the adoptive or prospective adoptive parent(s) are abroad, fingerprints may be taken at a U.S. embassy, consulate, U.S. military installation or INS office. A complete definition of "adult member" can be found in Appendix B.
3. Proof of the petitioner's U.S. citizenship, and if the petitioner is married and residing in the United States, proof of the spouse's U.S. citizenship or lawful immigration status.
4. Proof of the marriage of the petitioner and spouse, if married.
5. Proof of the legal termination of any prior marriages of the petitioner and spouse or unmarried petitioner, if applicable.
6. Proof of compliance with preadoption requirements, if any, of the state of the child's proposed residence.
7. A favorably recommended home study that meets the requirements as outlined in Section III, D of this publication.
8. Required filing fee.
9. Proof of child's age and identity.
10. Proof that the child is an orphan as appropriate:
  - a. proof that the orphan has been abandoned or deserted by, separated or lost from, both parents or that both parents have disappeared or died;
  - b. death certificate(s) of the child's parent(s), if applicable;
  - c. proof that the child's sole or surviving parent is unable to provide for the child's basic needs, consistent with the local standards of the foreign sending country and has, in writing, irrevocably released the child for emigration and adoption;
  - d. proof that the child has been unconditionally abandoned to an orphanage, if the child is in an orphanage.
11. If there was **no adoption abroad**, proof that the preadoption requirements, if any, of the state of the child's proposed residence have been met. This is also required if the child has been adopted abroad, but the adoption is not full and final, or if the unmarried adoptive parent, or **both** married adoptive parents, did not personally see the child prior to or during the adoption proceedings.
12. If there was no adoption abroad, proof that the prospective parent(s) have, or a person or entity working on behalf of the parent(s) has, **legal custody** of the child for emigration and adoption in the United States.
13. If the child was **adopted abroad**, a final decree of adoption must be submitted. For an adoption to be recognized as full and final, evidence must be submitted that the unmarried adoptive parent, or **both** married adoptive parents, saw the child prior to or during the adoption proceedings. If only one married adoptive parent or no adoptive parent saw the child, procedures outlined in number 11 above must then be followed.

**C O N T E N T S**

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## I. ELIGIBILITY FOR IMMIGRATION BENEFITS AS AN ORPHAN

# Eligibility

### A.

#### What Is an Orphan?

Under U.S. immigration law, an orphan is a foreign child **who does not have any parents** because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents. An orphan can also be a foreign-born child with **a sole or surviving parent** who is unable to provide for the child's basic needs, consistent with the local standards of the foreign sending country, and has, in writing, **irrevocably released** the child for emigration and adoption.

For such a child to gain immigration benefits, an orphan petition must be filed before his or her 16th birthday. The only exception to this is when a child is adopted with or after a sibling who is considered a "child" under the Act who has been or will be adopted by the same adoptive or prospective adoptive parent(s). In this type of case, the petition must be filed before the child reaches age 18.

### B.

#### Who Can File an Orphan Petition?

A married U.S. citizen and spouse (no special age) or an unmarried U.S. citizen at least 25 years of age may file an orphan petition. The spouse does not need to be a U.S. citizen; however, if living in the United States, the spouse must have a legal immigration status. The adoptive or prospective adoptive parent who signs the "certification of petitioner" on the orphan petition is called the petitioner.



## **C. Who Is Not Eligible to File an Orphan Petition?**

The following persons are **not** eligible to file an orphan petition:

- An unmarried U.S. citizen under the age of 25.
- An individual residing lawfully in the United States who is not a citizen.
- A married couple residing lawfully in the United States, neither of whom is a U.S. citizen.
- An individual or couple who does not have lawful immigration status in the United States.
- A U.S. citizen who is still legally married but separated from his or her spouse, unless the spouse joins in the petition.

## **D. An Orphan Petition May Be Denied If:**

- INS determines that the prospective adoptive parent(s) does not have the physical, mental and/or emotional capabilities to properly parent a child;
- INS finds that the prospective adoptive parent(s) does not have the financial capabilities to care for a child;
- An INS investigation or the home study reveals a history of abuse and/or violence and/or a criminal history;
- An INS investigation reveals unsuitable living conditions; and/or
- INS determines that the child does not fit the legal definition of “orphan.”

## **E. How Is the Immigration Benefit Gained?**

If an orphan petition is approved, the beneficiary (the child) of the petition is considered to be an immediate relative of a U.S. citizen. This means the child can get an immigrant visa right away without being placed on a visa waiting list.

**However, the child must still qualify for an immigrant visa just like any other immigrant.** For example, the orphan cannot get a visa if he or she is considered to be inadmissible to the United States. One reason for an orphan being inadmissible to the United States is when he or she has a contagious disease of public health significance. Waivers for certain grounds of inadmissibility may be sought, however. If an orphan petition is approved, an application for an immigrant visa may be made at an American embassy or consulate having jurisdiction over the child's residence.

When an orphan enters the United States with an immigrant visa, the child is considered to be a lawful permanent resident of the United States, not a U.S. citizen. General information about U.S. citizenship for foreign-born adopted children can be found in Section VII of this publication.

## **F. What If the Child Is Already in the United States?**

An orphan petition may not be filed in behalf of a child who is in the United States unless that child is in "parole" status and has not been adopted. If an orphan petition is approved for a child in the United States, the child can become a lawful permanent resident through a procedure called adjustment of status. In some ways, adjustment of status is similar to applying for an immigrant visa in a foreign country.

For information on how a child can become a permanent resident if the child is not eligible to benefit from an orphan petition, see Section VI.



## II. BASIC ORPHAN PETITION PROCEDURES

# *Procedures*

### *A.* **Advance Processing**

A U.S. citizen who plans to adopt a foreign-born orphan but does not have a specific child in mind can have the immigration paperwork done **much faster** by using a procedure called “advance processing.” Advance processing allows INS to first adjudicate the application that relates to the prospective adoptive parent(s) at a local INS office. Later, only the part of the petition relating to the child is processed.

Advance processing can also be done in the following case: the child is known and the prospective adoptive parent(s) are traveling to the country where the child is located. However, it is important for the prospective adoptive parent(s) to know that while travel back and forth between the foreign country and the United States is permitted for the prospective adoptive parent(s), the child must remain in the foreign country until the processing is completed.

Even though INS places a priority on processing orphan petitions, INS regulations require that all foreign adoptions undergo an investigation to guarantee compliance with the laws of both the United States and foreign sending country. Because this investigation takes time, prospective adoptive parents are encouraged to take advantage of the advance processing procedure. However, it is important to know that filing an advance processing application is optional. An orphan petition may be filed without the prospective adoptive or adoptive parent(s) ever filing the advance processing application.

### ***Where to File an Advance Processing Application***

Advance processing applications are generally filed while the prospective adoptive parent(s) is waiting for a child to be identified. When the child is unknown, the prospective adoptive parent(s) must submit the advance processing application packet to the local INS office having jurisdiction over their residence in the United States. INS office addresses are located in Section VIII, Part D. Information on which INS office has jurisdiction over a prospective adoptive parent(s)' residence can be found on the INS Internet website at [www.ins.usdoj.gov](http://www.ins.usdoj.gov).

In cases where a child has already been identified, no advance processing application is necessary. The orphan petition may be filed at the overseas INS office having jurisdiction or, if there is no overseas INS office, at the American consulate or embassy having jurisdiction.

There are INS offices in Aruba, Austria, the Bahamas, Canada, China, Cuba, Denmark, the Dominican Republic, Ecuador, El Salvador, England, Germany, Greece, Guatemala, Haiti, Honduras, Hong Kong, India, Ireland, Italy, Jamaica, Japan, Kenya, Korea, Mexico, Pakistan, Panama, Peru, the Philippines, Russia, Singapore, South Africa, Spain, Thailand, and Vietnam.



### *Eligibility for Advance Processing*

An application for advance processing may be filed by anyone who is eligible to file an orphan petition. The application may also be filed by an unmarried U.S. citizen at least 24 years of age, as long as he or she will be at least 25 when an orphan petition is filed on behalf of an actual child and when the child is adopted. The prospective adoptive parent who signs the “certification of prospective petitioner” on the advance processing application is called the prospective petitioner.



### *Forms Used for Advance Processing*

- **Form I-600A, Application for Advance Processing of Orphan Petition.** This form is orange. The required filing fee, which is noted in the instructions or on an attachment to the form, must accompany the application.
- **FD-258, Fingerprint Chart.** Fingerprints for each prospective adoptive parent and for each adult member of the prospective adoptive parents' household (individuals who are 18 years of age or older) must be taken on Form FD-258.

INS will schedule an appointment for fingerprinting after receiving the application. If the application is filed at an INS office in the United States, **do not** submit fingerprints with the application. However, the fingerprinting fee for each household member to be fingerprinted must be submitted with the advance processing application. The fingerprinting fee is in addition to the application fee, all payable to INS.

Note, however, that the prospective adoptive parent(s) who lives outside the United States must submit a properly completed FD-258 when filing the application.



The prospective adoptive parent(s) residing abroad may have the fingerprints taken by an American embassy or consulate, U.S. military installation or INS office having jurisdiction over their residence. The prospective adoptive parent(s) is exempt from the INS fingerprinting fee charged in the United States; however, the parent(s) is subject to fees assessed by the Departments of State or Defense. The prospective adoptive parent(s) who chooses to be fingerprinted by INS personnel overseas may be charged a fee at the time the fingerprints are taken.

According to policy, INS expedites all orphan cases for humanitarian reasons. Nevertheless, it takes a certain amount of time to conduct fingerprint checks, even though procedures are in place to ensure that the checks will be done as quickly as possible. This is why a prospective adoptive parent(s) is encouraged to use the advance processing procedures before locating a child for adoption.

### *Necessary Documents*

- Proof of the prospective petitioner's U.S. citizenship.
- Proof of the marriage of the prospective petitioner and spouse, if married.



- Proof of legal termination of all prior marriages of the prospective petitioner and spouse or unmarried prospective petitioner, if applicable.
- Proof that preadoption requirements, if any, of the state of the orphan's proposed residence have been met. This is required when:
  - it is known that the adoption will not be done abroad,
  - both the married prospective adoptive parents or the unmarried prospective parent will not personally see the child prior to or during the adoption abroad, and/or
  - the final adoption abroad will not be full and final.
- A favorably recommended home study. This is a report on the ability of the prospective adoptive parent(s) to care for a child or children. If the home study is not available, it must be submitted within **one year** from the date of filing the advance processing application, or the application will be considered abandoned. See Section III, D for additional information about the home study.





### *Decision*

INS must decide whether the prospective adoptive parent(s) are able to take care of one or more orphans properly, depending on the number of children they want to adopt. Form I-171H, Notice of Favorable Determination Concerning Application for Advance Processing of Orphan Petition, is sent to the prospective petitioner if the prospective adoptive parent(s) appears to qualify for further processing. This decision, however, does not guarantee that the orphan petition(s) to be filed will be approved. An orphan petition may still be denied because the child does not qualify as an orphan or for other proper cause.

When there is unfavorable information about the prospective adoptive parent(s) or about an adult member of the prospective adoptive parent(s)' household, and INS concludes that proper care could not be given to a child or children, INS will make an unfavorable decision. As a result, INS will advise the applicant of the action in writing and provide instructions on how to appeal an unfavorable decision.

### ***Filing an Orphan Petition After an Advance Processing Application Has Been Filed***

A separate orphan petition must be filed in behalf of each child with separate documentation relating to each child. An orphan petition or petitions may be filed while an advance processing application is pending or within 18 months after the date of an approved application. This date is shown on the Form I-171H, Notice of Favorable Determination Concerning Application for Advance Processing of Orphan Petitions.

No additional filing fee is necessary if only one orphan petition is filed, and if the petition is filed while an advance processing application is pending or within 18 months after a favorable decision on an advance processing application. An additional filing fee is required, however, for any other orphan petition. The only exception to this requirement is when more than one petition is submitted by the same petitioner in behalf of orphans who are brothers and/or sisters.

If there has been an unfavorable decision in an advance processing case and the grounds for the unfavorable decision are not overcome, but the prospective adoptive parent(s) files an orphan petition anyway, a filing fee is required. In such cases, the orphan petition will be denied unless the prospective adoptive parent(s) can prove that the grounds for the unfavorable decision no longer apply and that they can take care of a child or children properly.

### ***Where to File an Orphan Petition After an Advance Processing Application Has Been Filed***

Normally, an orphan petition is submitted at the same INS office where the advance processing application was filed. In fact, when an advance processing application is still pending, the orphan petition must be filed at the same office.

If after INS has made a favorable decision on an advance processing application, the prospective adoptive parent(s) travels overseas, the orphan petition may be filed abroad. In cases like this, the decision to submit the petition abroad, instead of in the United States, is up to the petitioner.

If the child lives in a foreign country where there is an INS office and the petitioner wants to file the petition abroad, the petition may be submitted at the INS office abroad. If there is no INS office in the foreign country, the petition should be filed at the American embassy or consulate having jurisdiction.

The prospective petitioner must state on the I-600A, Application for Advance Processing of Orphan Petition, where the I-600, Petition to Classify Orphan as an Immediate Relative, is to be filed once a favorable decision is made. If the I-600 is to be filed in the United States, it is filed at the INS office having jurisdiction over the prospective adoptive parent(s)' residence. If it is to be filed at



an INS office or consulate outside the United States, the I-600A is generally sent to the appropriate office overseas to be joined with the I-600.

### *Abandonment of Advance Processing*

If an orphan petition is not filed within 18 months after the date of the approval of an advance processing application, the application is considered abandoned, and the prospective petitioner is notified accordingly in writing. After an advance processing application is abandoned, the prospective petitioner must file either a new advance processing application or an orphan petition, if the petitioner later decides to petition for an orphan. In that case a new fee is necessary.



## *B.* **Orphan Petition**

### *What Is an Orphan Petition?*

An orphan petition is an INS form that is filed for an immigration benefit in behalf of an actual child who fits the definition of “orphan” according to U.S. immigration law. The child’s name, date of birth and other information must be known for such a petition to be filed.

### *Three Types of Processing*

An orphan petition can be filed when a child is identified and:

- an advance processing application **is pending** or it is **within 18 months** of a favorable decision in a completed advance processing case, or
- **no advance processing** application was filed, or
- an advance processing application was filed and approved, but no orphan petition was filed during the 18-month period.

### *Forms Used for an Orphan Petition*

- **Form I-600, Petition to Classify Orphan as an Immediate Relative.** This form is blue. The required filing fee, which is noted in the instructions or on an attachment to the form, must be paid. One exception for not submitting the fee is when an advance processing application is pending or when the petition is filed within 18-months after a favorable decision on an advance processing case. Another exception applies when more than one petition is submitted at the same time by the same petitioner in behalf of orphans who are brothers and/or sisters. In such cases, only the fee for the pending or approved advance processing application is necessary.
- **FD-258, Fingerprint Chart.** The FD-258 is not required when an advance processing application is pending or when the petition is filed within 18 months after a favorable decision on an advance processing case. When required, fingerprints must be taken for each prospective adoptive parent and for each adult member of the prospective adoptive parents’ household (individuals who are 18 years of age or older).

If fingerprints are required, the fingerprinting procedures for I-600 petitions are the same as described in Section II, A, Advance Processing.

### *Necessary Documents*

- Proof of the child's age. The petitioner should submit a certificate of the child's birth if it can be obtained. If the document cannot be obtained, the petitioner should submit an explanation along with the best available evidence of birth, **and**
- death certificate(s) of the orphan's parent(s), if applicable, **or**
- if the child has only a sole or surviving parent, proof of this fact and proof that the sole or surviving parent is unable to provide for the child's basic needs, consistent with the local standards of the foreign sending country and that the parent has, in writing, irrevocably released the child for emigration and adoption, **or**
- proof that the orphan was abandoned or deserted by, separated or lost from, both parents, or that both parents have disappeared, **or**
- proof that the child was unconditionally abandoned to an orphanage, if the child is in an orphanage, **and**
- all proof relating to the petitioner as described in Section II, A, Advance Processing, unless this proof was submitted with a pending advance processing application or unless it is within 18 months after a favorable decision in a completed advance processing case, **and**
- if there was no adoption abroad, proof that the pre-adoption requirements, if any, of the state of the orphan's proposed residence were met. This proof is also required if the orphan was adopted abroad, but the adoption is not full and final, or if the unmarried adoptive parent, or **both** married adoptive parents, did not personally see the child prior to or during the adoption proceeding, **and**
- if there was no adoption abroad, proof that the prospective parent(s) have, or a person or entity working on their behalf has, secured custody of the child in accordance with the laws of the foreign-sending country.
- if the orphan was **adopted abroad**, a final decree of adoption must be submitted. In order to recognize an adoption as full and final, evidence must be submitted verifying that the unmarried adoptive parent, or **both** married adoptive parents, saw the child prior to or during the adoption proceedings. If only one married adoptive parent or no adoptive parent saw the child prior to or during the adoption, proof must be submitted showing that the prospective adoptive parent(s) has, or a person or entity working on their behalf has, secured custody of the child in accordance with the laws of the foreign-sending country.

### *Decision*

INS must decide whether the adoptive or prospective adoptive parent(s) are able to care for the child properly, whether the child is an orphan as defined in U.S. immigration law, and whether all other legal requirements have been met. If the petition is approved, Form I-171, Notice of Approval of Relative Immigration Visa Petition, or an I-797, Notice of Action, is sent to the petitioner.

If the petition is denied, the petitioner is notified accordingly in writing. The petitioner may appeal that decision. Instructions on how to appeal are included in the notice of denial.





### III. BASIC ORPHAN PETITION REQUIREMENTS

# Requirements

## A. Adoption Abroad

If the orphan was adopted abroad, the petitioner must prove that both the married petitioner and spouse, or the unmarried petitioner, **personally saw** the child prior to or during the adoption proceedings. (Note that viewing a video or observing a photograph of a child **does not** constitute “personally seeing” the child.) The married petitioner and spouse must adopt the child jointly, or the unmarried petitioner must be at least 25 years of age at the time of the adoption.

## B. Adoption Abroad That Does Not Meet All Requirements

If both the petitioner and spouse or the unmarried petitioner did not **personally see and observe** the child prior to or during the adoption proceedings abroad, the petitioner (and spouse if married) must submit a statement showing the petitioner’s (and, if married, the spouse’s) willingness and intent to readopt the child in the United States. If requested, the petitioner must submit a statement from an official of the state in which the child will reside that readoption is permitted in that state. In addition, proof of compliance with the preadoption requirements, if any, of that state must be submitted.

## C. Preadoption Requirements

If the orphan **was not adopted abroad**, the petitioner and spouse or unmarried petitioner **must establish that the child will be adopted in the United States** by the petitioner and spouse jointly or by the unmarried petitioner. The petitioner must check the block on the Form I-600, Petition to Classify Orphan as an Immediate Relative, which shows the intent to adopt the child in the United States.

The petitioner and spouse or the unmarried petitioner must also prove that the preadoption requirements, if any, of the state of the orphan's proposed residence were met. Preadoption requirements, if any, **vary from state to state**. Information on how to prove that these requirements were met may be obtained from state and local officials who have jurisdiction in adoption matters, licensed public and private adoption agencies or the INS office that has jurisdiction over the prospective adoptive parent(s)' residence.

## D. Home Study

A favorable home study is required by the U.S. immigration law and **must** be submitted in support of an advance processing application or orphan petition. The home study **must** be completed by a "home study preparer" who is licensed or otherwise authorized to prepare home studies for adoptions under the laws of the state where the orphan will reside. In the case of a child adopted abroad by parent(s) living abroad, the home study must be **prepared** by an individual or agency that is licensed or authorized to prepare a home study under the laws of any state of the United States or any party licensed or otherwise authorized by the foreign country. Before submission to the INS, a home study prepared abroad must be **reviewed by and receive a favorable recommendation by** an appropriate public or private adoption agency licensed, or otherwise authorized, by any state of the United States to place children for adoption.

Both individuals and organizations may qualify to perform and prepare home studies. If an agency is licensed, the home study must include the state in which it is licensed, the license number, if any, and the period of validity of its license or authorization.

The home study research, including interviews and preparation, may be done in the United States or abroad, depending on where the prospective adoptive parent(s) resides. If the prospective parent(s) lives in the United States, the home study must be performed by an entity approved by the state where the parent(s) lives. For prospective parent(s) who reside outside the United States, the home study preparer must be licensed or otherwise authorized either by any state in the United States or by the foreign country where the home study is performed. In either case, a licensed or otherwise authorized public or private adoption agency in the United States must review and favorably recommend the home study before it is submitted to INS.

The home study must cover the following:

- an in-person interview and home visit with the prospective adoptive parent(s). All other adult members of the prospective parents' household must also be interviewed.
- a factual evaluation of the physical, mental, and emotional capabilities of the prospective adoptive parent(s) as well as other adult members of the household.
- a detailed description of the finances of the prospective adoptive parent(s), including but not limited to, income, debts, expenses and the costs of supporting other members of the family.
- a detailed description of the prospective adoptive parent(s)' living conditions.
- if applicable, a detailed description of the prospective adoptive parent(s)' ability to provide proper care for a disabled orphan.
- a description of counseling provided to the prospective adoptive parent(s) or plans for post-placement counseling.
- specific assessment of how the above factors would affect the prospective adoptive parent(s)' ability to care for an adopted child, the number of orphans that the parent(s) may adopt, and any restrictions on the children that should be placed with the parent(s).
- a check of child abuse record, and inquiries into substance abuse, child or sexual abuse and/or domestic violence. These checks and inquiries must relate to each adult member of the prospective parents' household. The results of these checks and inquiries must be noted in the home study.
- if there were any previous rejections for adoptions or if an unfavorable home study was ever prepared regarding any adult member of the prospective parents' household, explanations must be obtained.
- a criminal history of each adult in the prospective parents' household, including expungements and juvenile arrests.
- failure to disclose an arrest and/or conviction, history of any substance abuse, sexual or child abuse, or domestic violence may result in a denial of the advance processing application or orphan petition.

Prospective adoptive parent(s) and **all adult household members over the age of 18, whose “principal or only residence” is the prospective adoptive parents’ home** must disclose **any** history of arrest and/or conviction. **Court certified copies of the indictment or information and judgement of all criminal court actions** for the prospective adoptive parent(s) and each adult household member, along with a signed statement by the prospective adoptive parent(s) and/or adult household member relating to any mitigating circumstances, **must be included** in the home study.

Prospective adoptive parent(s) should know that even if there is a criminal or abuse history, a favorable recommendation may be made in the home study if “appropriate rehabilitation” has been demonstrated.

INS will not accept a home study that is more than six months old unless it is accompanied by an update that is less than six months old. Once the home study has been submitted, updates must be made if something significant occurs, including changes in marital status, finances, change in residence, arrests, convictions, etc.





## **IV. OVERSEAS ORPHAN INVESTIGATION**

# *Investigation*

### *A.* **Purpose**

When an orphan petition is sent to or filed at an American consulate or embassy for possible issuance of an immigrant visa to a child, an overseas orphan investigation takes place as part of normal processing. This investigation is conducted by a Department of State consular officer or an INS officer for those posts where INS has an office. The officer will make every effort to expedite the investigation; however, the process can sometimes be lengthy. Before making travel arrangements, adoptive parent(s) going abroad for processing should contact the appropriate American embassy or consulate or INS overseas office for details on processing times. The purpose of the investigation is to confirm that:

- the child is an orphan as defined in the U.S. immigration law, and
- the child does not have an illness or disability that is not described in the orphan petition.

### *B.* **Questions About the Child Being an Orphan**

If it appears that the child is not eligible for classification as an orphan under the U.S. immigration law, INS will issue a notice of intent to revoke the approval of the orphan petition. When the petitioner receives such notice, he or she is provided with an opportunity to submit evidence to overcome the stated grounds for revoking the approval.

## *C.* **Illness or Disability**

If it is found that the child has an illness or disability that is not described in the petition, the petitioner and spouse, if married, are provided with details about the medical condition by either INS or the American embassy or consulate, depending on where the orphan petition was filed. The petitioner and spouse, if married, may then decide whether they still want to bring the child to the United States as an immigrant.

If the prospective adoptive parent(s) decide to bring such a child to the United States, the parent(s) should be advised that the child must still be admissible to the United States. Some illnesses will make the child inadmissible. For example, if the child has a communicable disease of public health significance, that child may be inadmissible. Most such grounds of inadmissibility may be waived if certain conditions are met. The prospective adoptive parent(s) should verify with INS that a child's illness or disability does not make him or her inadmissible. If grounds of inadmissibility apply, the parent(s) will be told what requirements must be met before the child may legally enter the United States.

## *D.* **Fraudulent Practices**

Prospective adoptive parent(s) are cautioned to **avoid fraudulent adoption practices** and agencies or individuals who engage in such activities. They should deal only with reputable sources of children for adoption and make sure that all proceedings in which they engage are legal.

INS has found that foreign children are sometimes stolen from their parents for adoption in the United States. There is also a market for fraudulent documents for children who could be beneficiaries of orphan petitions.

Unscrupulous individuals or arrangers entice clients by boasting that theirs is a faster, cheaper and easier way to adopt children. Adoptive parents are exploited by paying exorbitant fees and never receiving the children, or getting unhealthy children, or being made parties to fraudulent acts.

When INS has reason to believe that an orphan petition may involve fraudulent adoption practices, the overseas orphan investigation is completed **before** the petition is approved. While the investigation is always done as quickly as possible, this may delay the completion of the case. INS makes every effort to ensure that an orphan petition does not involve fraudulent adoption practices. In addition, the investigation is done as a service to the adoptive parent(s). It protects the parent(s) from a potentially heartbreaking situation that may occur when an adoption is not legal.

## V. DIFFICULT ISSUES IN ORPHAN CASES

# *Difficult Issues*

### *A.* **Children Born Out of Wedlock**

The prospective adoptive parent(s) should be aware that although a child may be born out of wedlock, that child may still have two parents.

A child born out of wedlock in a country that has **not** eliminated all legal distinctions between “legitimate” and “illegitimate,” and who has not been legitimated under the laws of the child’s or father’s residence or domicile, has a sole parent—his or her mother—unless the child has or had a bona fide relationship with the father.

If the child has or had a bona fide relationship with his or her father, the child may be considered to have a sole parent—his or her mother—only if the father has disappeared, abandoned, deserted, or in writing irrevocably released the child for emigration and adoption.

In both cases it must be evident that the mother is incapable of providing proper care for the child according to the standards of the country where she and the child reside and, in writing, irrevocably releases the child for emigration and adoption.

If a child is born out of wedlock in a country that **has** eliminated all legal distinctions between “legitimate” and “illegitimate,” paternity has been established, and the father has recognized or acknowledged the child, that child is considered “legitimated” with the child having both parents, not a sole parent.

Adoptive and prospective adoptive parents of children who were born out of wedlock should become familiar with the legitimacy laws in the countries where the children were born and/or live. If a child born out of wedlock is from a country that has eliminated all legal distinctions between legitimate and illegitimate, the child may still qualify for classification as an orphan under the U.S. immigration law as long as there is proof that paternity has not been acknowledged or established before the civil authorities in that country. Prospective adoptive parents may obtain information regarding a specific country’s legitimacy laws from INS or the Department of State.



## *B.* **Legitimated Children**

Most countries have legal procedures for the legitimation of children by their natural fathers. Accordingly, adoptive and prospective adoptive parents of children born out of wedlock should become familiar with the laws of a foreign country to determine how children become legitimated. A legitimated child has the same rights as a child born in wedlock. A legitimated child from any country has two legal parents and cannot qualify as an orphan unless only one of the parents is living or both of the parents have abandoned the child.





## C. Abandonment

A child abandoned by both parents may qualify as an orphan under U.S. immigration law. A complete definition of abandonment can be found in Appendix B.

INS regulations state that a child who has been unconditionally abandoned to an orphanage is considered to have no parents. A child is not deemed abandoned, however, when he or she has been **temporarily** placed in a orphanage and the parent or parents are contributing or trying to contribute to the child's support, or the parent or parents otherwise show that they have not ended their parental obligations to the child.

While a finding of abandonment may normally be made when the child is in the custody of an orphanage or an orphanage-like institution, the definition of the term "abandonment" is not limited to those instances. Children in other situations could possibly be considered abandoned, but adoptive or prospective adoptive parents seeking to prove the claimed abandonment should obtain **legal documentation from a competent authority in the country where the child resides.**

For example, in a case where a child is a ward of the court, the parents must refuse to meet their parental and legal obligations to care for and support their child and give up parental claims to the child. On the other hand, if the natural parents are deprived of custody only temporarily and afforded a chance to care for the child, the child would not be considered an orphan.

Also, a relinquishment or release of a child by the biological parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment.

Occasionally, some persons will try to make a child appear to have been abandoned in order to facilitate the child's immigration to the United States. If a child has been designated a ward of the court merely as a contrivance, the child would not qualify as an orphan. If the decree declaring the child to be a ward of the court does not describe circumstances establishing that he or she is an orphan, other proof of abandonment must be submitted in support of the petition.

## *D.* **Intra-Familial Adoptions**

Prospective adoptive parents wishing to adopt a family member may encounter problems that are not found in other adoption cases. Most will find it difficult to prove that the child meets the definition of an orphan under the U.S. immigration law.

As stated previously, a child is an orphan only if the sole or surviving parent is unable to care for the child properly according to the standards of the country where the parent and child reside and has, in writing, **irrevocably** released the child for emigration and adoption; or if the child has been abandoned or deserted by, separated or lost from, both parents, or if both parents have disappeared or died.

Additional documentation is required to verify the claim of abandonment, desertion, separation from both parents, or that both parents have disappeared or died.

Once the child has been irrevocably released by the natural parents, the parents can **never** gain any immigration benefit through the child.

## *E.* **Some Problems Faced by Adoptive and Prospective Adoptive Parent(s) of Foreign-Born Children**

The adoptive and prospective adoptive parent(s) of foreign-born children face complex requirements that appear in the law itself. INS has kept the documentary, regulatory and procedural requirements to a minimum, while conforming with the intent of the law. In addition to INS requirements, petitions for orphans must also comply with state and foreign adoption laws.

The laws of some countries do not permit adoption. Laws of other countries restrict persons eligible to adopt children. There are children legally adopted abroad who do not qualify as orphans according to the U.S. immigration law (see definition of orphan in Appendix B). The adoptive and prospective adoptive parent(s) should be aware that **not all children adopted abroad are orphans**, and what appears to be a foreign adoption may not comply with the laws of the foreign state; and some valid foreign adoptions are not sufficient to classify the adopted person as a “child” under U.S. immigration law.

It is the responsibility of the petitioner to prove to INS that a child is eligible for classification as an orphan for immigration purposes. The evidence must be in the form of documents. This evidence may vary, depending on the facts of the case. Therefore, it is sometimes necessary to submit documents in addition to those described in Section II, B, Forms Used for an Orphan Petition.

## VI. OTHER PROCEDURES CONCERNING ADOPTIVE RELATIONSHIPS

# Other Procedures

*Although most adoptive and prospective adoptive children gain immigration benefits through the section of law on orphan petitions, there is another part of the statute where immigration benefits may be gained through adoptive relationships. Both sections specifically state that the natural parents may not gain any immigration benefits through their previous relationship to the child. At the present time, there is no limit on the number of petitions for adopted or prospective adoptive children which may be approved for any one petitioner.*

### **Children Who Live for Two Years With an Adoptive or Prospective Adoptive Parent(s)**

Immigration benefits may be gained under a section of the U.S. immigration law\* based on an adoptive relationship if the child was adopted **before the age of 16 or, in limited situations relating to the adoption of siblings, before the age of 18**. This benefit may be obtained if the child has been in the **legal custody** of and **has resided with** the adopting parent(s) for at least **two years** before the petition is filed. The two-year legal custody and residence requirements may take place **before or after** the adoption is final. The definition of legal custody can be found in Appendix B.

Legal custody begins when it is awarded to the prospective adoptive parent(s) by a legal process via the courts or other recognized government entity and is evidenced by either an official document in the form of a written award of custody or a final adoption decree. Legal custody and residence are accounted for **in the aggregate**; therefore, **a break will not affect the time** already fulfilled.

\* Section 101(b)(1)(E) of the Immigration and Nationality Act.

In addition, the legal custody and residence requirements may be satisfied when met by only one of the adopting parents, rather than both. In other words, a petition may be granted when only the petitioner's spouse has met the requirements, as long as the spouse has also adopted the child. **No home study is required.** Furthermore, a person petitioning for a child under this section of law **does not** have to be a U.S. citizen but may be a lawful permanent resident of the United States.

This section of law may be used, for example, by a U.S. military family stationed in a foreign country where the child was not an orphan because he or she had two married, living parents. Although not abandoned, the child, nevertheless, lived with and was in the legal custody of the U.S. military family for at least two years and was adopted before the age of 16. **This section should not be confused with the law on orphan petitions, which has completely different requirements.**

In order to gain immigration benefits under this section, a Form I-130, Petition for Alien Relative, must be filed and approved while the adopted child is unmarried and under the age of 21.

Children are not the only persons who can gain immigration benefits under this section. An adult adopted son or daughter or adoptive parent, sister or brother can also gain benefits through an adoptive relationship as the beneficiary of an I-130 petition. However, all requirements of the law must be met and the legal adoption must occur before the adopted person's 16th birthday or, in limited situations relating to the adoption of siblings, before the person reaches the age of 18.



**VII. U.S. CITIZENSHIP FOR A FOREIGN-BORN  
ADOPTED CHILD**

*Citizenship*

*This section is currently under revision. For information regarding U.S. citizenship for a foreign-born adopted child please read our information sheet on the Child Citizenship Act.*

\* Generally, Section 316 of the Immigration and Nationality Act, or under specified circumstances, Sections 319, 328, or 329 of the Act may apply.



## VIII. APPENDIX

# Appendix

## A. Sections of Law and Regulation Relating to Orphan Petitions

The following citations may be of interest to adoptive and prospective adoptive parent(s) who need more information on petitions for orphan and adopted children. These sections of law may also be of interest to adoption agencies, community-based organizations and attorneys who represent adoptive and prospective adoptive parents.

- *Sections of the Immigration and Nationality Act (the Act)*

**Section 101(b)(1)(E)** [8 U.S. Code (U.S.C.) 1101(b)(1)(E)]—Adopted children (other than orphans).

**Section 101(b)(1)(F)** [8 U.S.C. 1101(b)(1)(F)]—Orphans.

**Section 204(a), (b), (c) and (d)** [8 U.S.C. 1154(a), (b), (c) and (d)]—Procedures for granting immigrant status.

**Section 205** (8 U.S.C. 1155)—Revocation of approval of petitions; notice of revocations; effective date.

- *Sections of Regulations in the Code Federal Regulations (CFR)*

**Title 8, Section 204.2**—Petitions for relatives, widows and widowers, and abused spouses and children.

**Title 8 CFR 204.3**—Orphans.

**Title 8 CFR 205**—Revocation.

\*\* *Section 101(b)(1)(E) of the Immigration and Nationality Act.*

\*\*\* *Section 101(b)(1)(F) of the Immigration and Nationality Act.*

## **B. Glossary/Definitions**

### ***Definitions From Immigration and Nationality Act Relating to Section 204(c)***

***Adopted Child*** is defined in section 101(b)(1)(E) of the Act as “a child adopted while under the age of sixteen years who has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years: *Provided*, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter.”

Public Law 106-139, signed by the President on December 7, 1999, amended section 101(b)(1)(E) of the Act to add that a child who is a natural sibling of an adopted child described above, and who was adopted by the adoptive parent or parents of the sibling while the child was under the age of 18, is also a “child” as defined by the Act. The child must otherwise fall under the definition of a child under paragraph (E) except that the child was adopted while under the age of 18.

***Orphan*** is defined in section 101(b)(1)(F) of the Act as “a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b), who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has, in writing, irrevocably released the child for emigration and adoption; who has been adopted abroad by a U.S. citizen and spouse jointly, or by an unmarried U.S. citizen at least twenty-five years of age, who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a U.S. citizen and spouse jointly, or by an unmarried U.S. citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child’s proposed residence: *Provided*, That the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States: *Provided further*, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act.”

Public Law 106-139, signed by the President on December 7, 1999, amended section 101(b)(1)(F) of the Act to include the natural sibling of a previously adopted child,” when the sibling has been adopted abroad or is coming to the United States for adoption by the same United States citizen parent(s) or prospective parent(s), if the child is under the age of 18 when the petition to accord a classification as an immediate relative under section 201(b) of the Act is filed on his or her behalf.



***Title 8 CFR 204.2 Definitions.***

***Legal custody*** as defined in 8 CFR 204.2(d) (2) (vii) (A) means the assumption of responsibility for a minor by an adult under the laws of the state and under the order or approval of a court of law or other appropriate government entity. This provision requires that a legal process involving the courts or other recognized government entity take place. If the adopting parent was granted legal custody by the court or recognized government entity prior to the adoption, that period may be counted toward fulfillment of the two-year legal custody requirement. However, if custody was not granted prior to the adoption, the adoption decree shall be deemed to mark the commencement of legal custody. An informal custodial or guardianship document, such as a sworn affidavit signed before a notary public, is insufficient for this purpose.

***Resided with*** information can be found in 8 CFR 204.2(d) (2) (vii) (B). This section of the regulations says evidence must also be submitted to show that the beneficiary resided with the petitioner for at least two years. Generally, such documentation must establish that the petitioner and the beneficiary resided



together in a familial relationship. Evidence of parental control may include, but is not limited to, evidence that the adoptive parent owns or maintains the property where the child resides and provides financial support and day-to-day supervision. The evidence must clearly indicate the physical living arrangements of the adopted child, the adoptive parent(s), and the natural parent(s) for the period of time during which the adoptive parent claims to have met the residence requirement. When the adopted child continued to reside in the same household as the natural parent(s) during the period in which the adoptive parent petitioner seeks to establish his or her compliance with this requirement, the petitioner has the burden of establishing that he or she exercised primary parental control during that period of residence.



## **8 CFR 204.3(b) Definitions**

***Abandonment by both parents*** means that the parents have willfully forsaken all parental rights, obligations and claims to the child, as well as all control over and possession of the child, without intending to transfer, or without transferring, these rights to any specific person(s). Abandonment must include not only the intention to surrender all parental rights, obligations and claims to the child, and control over and possession of the child, but also the actual act of surrendering such rights, obligations, claims, control and possession. A relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment. Similarly, the relinquishment or release of the child by the parents to a third party for custodial care in anticipation of, or preparation for, adoption does not constitute abandonment unless the third party (such as a governmental agency, a court of competent jurisdiction, an adoption agency or an orphanage) is authorized under the child welfare laws of the foreign-sending country to act in such a capacity. A child who is placed temporarily in an orphanage shall not be considered to be abandoned if the parents express an intention to retrieve the child, are contributing or attempting to contribute to the support of the child, or otherwise exhibit ongoing parental interest in the child. A child who has been given unconditionally to an orphanage shall be considered to be abandoned.

***Adult member of the prospective adoptive parents' household*** means an individual, other than the prospective adoptive parent, over the age of 18, whose principal or only residence is the home of the prospective adoptive parents. This definition excludes any child of the prospective adoptive parents, whose principal or only residence is the home of the prospective adoptive parents, who reaches his or her 18th birthday after the prospective adoptive parents have filed the advance processing application (or the advance processing application concurrently with the orphan petition) unless the INS director has an articulable and substantive reason for requiring an evaluation by a home study preparer and/or a fingerprint check.

***Advance processing application*** means Form I-600A, Application for Advance Processing of Orphan Petition, completed in accordance with the form's instructions and submitted with the required supporting documentation and fee as required in 8 CFR 103.7(b) (1). The application must be signed in accordance with the form's instructions by the married petitioner and spouse, or by the unmarried petitioner.

***Application*** is synonymous with advance processing application.

***Competent authority*** means a court or governmental agency of a foreign-sending country having jurisdiction and authority to make decisions in matters of child welfare, including adoption.



***Desertion by both parents*** means that the parents have willfully forsaken their child and have refused to carry out their parental rights and obligations and that, as a result, the child has become a ward of a competent authority in accordance with the laws of the foreign-sending country.

***Disappearance of both parents*** means that both parents have unaccountably or inexplicably passed out of the child's life, their whereabouts are unknown, there is no reasonable hope of their reappearance and there has been a reasonable effort to locate them as determined by a competent authority in accordance with the laws of the foreign-sending country.

***Foreign-sending country*** means the country of the orphan's citizenship, or if he or she is not permanently residing in the country of citizenship, the country of the orphan's habitual residence. This excludes a country to which the orphan travels temporarily, or to which he or she travels either as a prelude to, or in conjunction with, his or her adoption and/or immigration to the United States.

***Home study preparer*** means any party licensed or otherwise authorized under the law of the state of the orphan's proposed residence to conduct the research and preparation for a home study, including the required personal interview(s). This term includes a public agency with authority under that state's law in adoption matters, public or private adoption agencies licensed or otherwise authorized by the laws of that state to place children for adoption, and organizations or individuals licensed or otherwise authorized to conduct the research and preparation for a home study, including the required personal interview(s), under the laws of the state of the orphan's proposed residence. In the case of an orphan whose adoption has been finalized abroad and whose adoptive parents reside abroad, the home study preparer includes any party licensed or otherwise authorized to conduct home studies under the law of any state of the United States, or any party licensed or otherwise authorized by the foreign country's adoption authorities to conduct home studies under the laws of the foreign country.

***Incapable of providing proper care*** means that a sole or surviving parent is unable to provide for the child's basic needs, consistent with the local standards of the foreign-sending country.

***Loss from both parents*** means the involuntary severance or detachment of the child from the parents in a permanent manner such as that caused by a natural disaster, civil unrest or other calamitous event beyond the control of the parents, as verified by a competent authority in accordance with the laws of the foreign-sending country.

***Orphan petition*** means Form I-600, Petition to Classify Orphan as an Immediate Relative. The petition must be completed in accordance with the form's instructions and submitted with the required supporting documents and, if there is not an advance processing application approved within the previous 18 months or pending, the fee as

required in 8 CFR 103.7(b)(1). The petition must be signed in accordance with the form's instructions by the married petitioner and spouse, or the unmarried petitioner.

*Overseas site* means the Department of State immigrant visa-issuing post having jurisdiction over the orphan's residence, or in foreign countries in which INS has an office or offices, with the INS office having jurisdiction over the orphan's residence.

*Petition* is synonymous with orphan petition.

*Petitioner* means a married U.S. citizen of any age, or an unmarried U.S. citizen who is at least 24 years old at the time he or she files the advance processing application and at least 25 years old at the time he or she files the orphan petition. In the case of a married couple, both of whom are U.S. citizens, either party may be the petitioner.



*Prospective adoptive parents* means a married U.S. citizen of any age and his or her spouse of any age, or an unmarried U.S. citizen who is at least 24 years old at the time he or she files the advance processing application and at least 25 years old at the time he or she files the orphan petition. The spouse of the U.S. citizen may be a citizen or an alien. An alien spouse must be in lawful status if residing in the United States.

*Separation from both parents* means the involuntary severance of the child from his or her parent by action of a competent authority for good cause and in accordance with the laws of the foreign-sending country. The parents must have been properly notified and granted the opportunity to contest such action. The termination of all parental rights and obligations must be permanent and unconditional.

*Surviving parent* means the child's living parent when the child's other parent is dead, and the child has not acquired another parent within the meaning of section 101(b)(2) of the INA. In all cases, a surviving parent must be incapable of providing proper care as that term is defined in the section of law.



## **C. Forms Used in Orphan Cases**

**Form 171**—Notice of Approval of Relative Immigrant Visa Petition (sent to petitioning parent when I-600 orphan petition is approved).

**Form 171H**—Notice of Favorable Determination Concerning Applications for Advance Processing of Orphan Petition.

**Form I-600**—Petition to Classify Orphan as an Immediate Relative.

**Form I-600A**—Application for Advance Processing of Orphan Petition.

**Form 604**—Request for and Report on Overseas Orphan Investigation (internal form used by INS and consular officers).

**Form I-797**—Notice of Action. In some INS offices, this form is used instead of the I-171 and I-171-H.

**Form FD-258**—Applicant Fingerprint Card. Used to obtain fingerprints of the adoptive or prospective adoptive parent(s) and each adult member of the adoptive or prospective adoptive parent(s)' household.



### *Other Forms Used*

**Form I-130**—Petition for Alien Relative.

**Form I-485**—Application to Register Permanent Residence or Adjust Status.

**Form I-765**—Application for Employment Authorization.

**Form I-864**—Affidavit of Support Under Section 213A of the Act.

**Form N-400**—Application for Naturalization.

**Form N-600**—Application for Certificate of Citizenship.

**Form N-600A**—Supplement to the N-600 or N-643. This form is used by the citizen parent to document the physical presence of his or her citizen parent—the child’s grandparent—in the United States.

**Form N-643**—Application for Certificate of Citizenship on Behalf of an Adopted Child.

INS forms may be obtained by calling the INS Forms Line at 1-800-870-**FORM**(3676).



## **Links to Useful Websites:**

<http://travel.state.gov/adopt.html> U.S. Department of State Office of Children's Issues: The Office of Children's Issues formulates, develops and coordinates policies and programs and provides direction to foreign service posts on international parental child abduction and international adoption

[http://www.travel.state.gov/travel\\_warnings.html](http://www.travel.state.gov/travel_warnings.html) U.S. Department of State Travel Warnings. Information provided by the U.S. Department of State regarding social and political conditions in other countries.

<http://www.calib.com/naic/> National Adoption Information Clearinghouse: The National Adoption Information Clearinghouse is a comprehensive resource on all aspects of adoption, is a service of the Children's Bureau, Administration on Children, Youth and Families, Administration for Children and Families, Department of Health and Human Services.

Educational sites:

<http://www.law.cornell.edu/topics/adoption.html> Cornell University Law School On-line library on Adoption law.

Organization sites:

<http://www.adoptionattorneys.org/> AAAA. The American Academy of Adoption Attorneys is a national association of attorneys who practice, or have otherwise distinguished themselves, in the field of adoption law.

<http://www.adoptioninstitute.org/> The Evan B. Donaldson Adoption Institute  
The Evan B. Donaldson Adoption Institute is committed to providing reliable, quality information that can inform policy and practice development and can elevate the debate on the more controversial issues in adoption to a fully informed level.

<http://www.jcics.org/> JCICS: The Joint Council on International Children's Services from North America (JCICS) is the oldest and largest affiliation of licensed, nonprofit international adoption agencies in the world.

<http://www.nacac.org/> NACAC: Founded in 1974 by adoptive parents, the North American Council on Adoptable Children is committed to meeting the needs of waiting children and the families who adopt them.

<http://www.ncfa-usa.org/home.html> NCFEA: The National Council For Adoption is a 501(c)(3) charity that has one goal in mind - To help as many children as possible find permanent homes through adoption.