

COMMUNITY

JOURNAL

Immigrant visas for children to be adopted



and referred to the prospective adoptive family. It should be noted that the new regulations have carved out an exception for blood relatives who already know the adoptive child. As a practical matter the adopting family must keep in mind that the procedure for the adoption must be finalized before the child's 16th birthday. Families that have connected with a destitute child or desire to adopt the child of a family friend will require the approval of the Central Authority which will make a case-specific determination to approve prior contact with the child to ensure that they are Convention compliant.

Even after the adopting family accepts the referral of an eligible child, which includes a child of a relative or destitute child, several steps with various agencies need to be taken before the family may immigrate and adopt the child. An I-800 application must be filed with the United States Citizenship and Immigration Services (USCIS) and provisionally approved. Then an immigrant visa application must be filed. Once the consular officer determines that the child is eligible for a visa, the Central Authority is given an "Article Five Letter" which then authorizes the family to begin procedures to bring the child to the United States for adoption.

The final approval of the I-800 petition lies with the Department of State officer with jurisdiction to adjudicate the child's immigrant visa. Where the case is "not clearly approvable," the Department of State may refer the case to USCIS for the final decision of the I-800 petition.

In cases where an adoption or guardianship has already been established, new regulations allow for the decree to be voided so that the family may comply with the Convention.

In some instances the Convention has made the process less difficult for adopting families. In fact under the traditional rules for adopting an orphan, it would

be impossible for most families to immigrate adopted children. Under the old laws, an orphan was defined as a child who has suffered from the death or disappearance of both parents, or for whom the sole surviving parent is unable to provide proper care. Additionally, the traditional rules only allowed single mothers to be considered the sole surviving parent. Unmarried fathers would not be allowed to release the child for adoption.

The Convention definition of an adoptable child is much broader. Both parents or the sole surviving parent may consent to terminate their parental rights and allow the child to emigrate. The child's birth parents may still be alive, but they must be incapable of providing care for their child. In considering whether the birth parents were "incapable of providing proper care," all relevant circumstances would be examined based on local standards. This will include financial concerns, poverty, medical, mental, or emotional difficul-

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