

Defining the Child for Immigration Purposes

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When does a child qualify for immigration benefits?

The term "child" may be clear enough for most of us, especially for those whose child is born in wedlock. The Immigration Service, however, clearly underlines certain key points with regard to other definitions outside of the category of a child born in wedlock.

The following is a broad outline of the definition of "child" including those that may be categorized under the gray areas:

1. **Child Born in Wedlock:** A child born in wedlock and is under the age of 21 qualifies for immigration benefits as an immediate relative of a citizen parent. If the child is married or over the age of 21, he or she is a "son or daughter" as specified in other family-based preferences. Two children born in wedlock are "brothers or sisters".
2. **Child Born out of Wedlock:**
 - a). Child born out of wedlock based on relationship to mother: The policy towards a child born out of wedlock does not differ widely from the above. The immigration benefits will be based on the child's relationship to the mother and for immigration purposes, the mother is a "parent". A child born to the same mother but whose child's father is different, is considered "brother or sister".
 - b). Child born out of wedlock based on relationship to natural father: For the child to qualify for immigration benefits based on his or her relationship to the natural father, the father must submit evidence of a legitimate parent-child relationship such as cohabitation, if indeed parent and child live together, or financial support. It is important also that the father makes the efforts to "legitimate" the child before his or her eighteenth birthday and legally place the child in his custody, unless the child's birthplace erased all difference between legitimate and illegitimate children before his eighteenth birthday. This step is particularly necessary if the law of the child's birthplace has not yet abolished the labelling of distinctions between legitimate and illegitimate children.
3. **Stepchild:** Immigration benefits are granted to a stepchild when the step relationship with the stepparent was formed before the child's eighteenth birthday. The stepparent may petition the child as his stepchild for so long as the child has not reached the age of eighteen when the natural parent and stepparent married. This alternative may be useful when a father is unable to "legitimate" his child as outlined above. But in this case necessary documents may be required primarily to establish the father's paternity to the child including affidavits from the natural mother or other relatives.

4. **Adopted children:** Adopted children may qualify for immigration benefits if the adoptive parents legally adopted the child before his or her 16th birthday. The child must also have resided with the adoptive parents for at least two years before or after the adoption and must have been in their legal custody for two years before or after the adoption.
5. **Orphans:** Orphans eligible for immigration benefits are those who have been abandoned by their parents or released by the sole surviving parent for adoption. They are eligible if the adoptive parents are American citizens and have legally adopted the child or are in the process of adopting and have undergone the preadoption proceedings. Adoptions of illegitimate orphans must be completed through the permission of the mother, and also the father if a bonafide parent-child relationship exists between the natural father and the child. However, when the father has abandoned or deserted the child or has disappeared, permission for release for adoption purposes need not be obtained from the father.