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Petitioning Foreign Orphans

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Orphaned children who are adopted or who are in the process of being adopted by U.S. citizens may immigrate to the U.S. as immediate relatives. They are not covered by quota requirements and can therefore get their green cards faster.

For a child to qualify for orphan status, several elements must be present.

1. The child's country must allow adoption of orphans by foreign nationals. A U.S. citizen who intends to adopt an alien child must comply with the adoption laws of the child's country. Any attempt to evade local laws is strongly condemned by the INS and may lead to the rejection of the petition. Prospective parents are advised to gather information about adoption laws and whether orphans are available for adoption in the country where they intend to adopt before they even start the adoption process. This would avoid a waste in financial and emotional resources in a search that may prove fruitless.

2. The child must be an eligible orphan. Under U.S. law a child is an orphan if he is under 16 years of age and both natural parents are either dead or have permanently and legally abandoned or deserted the child. Most countries recognize a child to be legally abandoned when he is placed in the custody of a government-recognized child care agency or is unconditionally abandoned in an orphanage. All parental rights, obligations and claims to the child are given up. A deserted child is someone whose parents for unknown reasons left the child, and efforts to locate them proved futile.

When a child has one surviving parent, he could still be considered an orphan if the surviving parent has not remarried and he does not have the capability to care for the child. The parent must irrevocably release the child for adoption and emigration.

A child born out of wedlock may have orphan status if the mother has not married, and the father has abandoned the child. A legitimated child is not an orphan if both parents are alive.

3. Only a U.S. citizen may file a petition to seek immediate relative status for an eligible orphan. If the petitioner is married, the couple must file a joint petition even if the spouse is not a U.S. citizen. The spouse must have a lawful immigration status. An unmarried petitioner must be at least twenty-five years old to file an orphan petition.

4. The child must have been validly adopted abroad or, if not, the prospective adoptive parents must have valid custody of the child and must take steps to adopt the child in the U.S. The foreign adoption is effective for purposes of filing an immigration petition if the named petitioner and his spouse jointly adopted the child, personally saw and observed the child prior to or during the adoption proceedings, and the adoption is full and final. If the above requirements were not met, then the foreign adoption was ineffective and the following must be done: a). The petitioner must secure legal custody of the orphan under the laws of the foreign country; b). The orphan must be irrevocably released for emigration and adoption by the party who has the legal custody; c). The petitioner must go through the preadoption requirements of the state of intended residence; and d). The state of intended residence must allow readoption.

5. Home study requirement. This is an evaluation conducted by a licensed or authorized party who will conduct a study to determine if the prospective parents are capable of providing the proper care the child needs. It is meant to protect the orphan from being placed in a situation that could endanger him. The evaluation will cover the prospective petitioner and spouse as well as any adult member of the family. Each one will be screened for any previous history of abuse and or violence, criminal history, and previous rejections for adoptions if any. It will also assess the physical, mental, and emotional capabilities of the prospective adoptive parents to properly parent the orphan. A financial assessment including a description of the income, financial resources, debts and expenses is included in the evaluation.