

Petitioning an Adopted Relative for Immigration

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There are several cases of Filipino Americans petitioning their adopted children, who may either be their grandchild, nephew or niece.

There are clear-cut rules with respect to adopted children who are beneficiaries of immigrant petitions because the US Citizenship and Immigration Service (USCIS) is generally wary of sham adoptions of relatives that are intended to circumvent immigration rules.

How can adoptive children be petitioned to join their parents in the US?

Adopted Children

A child is considered an "adopted child" for immigration purposes if s/he was adopted before the age of 16; s/he has been under the legal custody of the adoptive parents; and s/he has been actually residing with the adoptive parents for two years.

As a rule, a child adopted after the age of 16 will not be considered an "adopted child" for immigration purposes.

To prove legal custody over the child, the adoptive parents must present a final adoption decree or other official government document conferring legal custody over the child to the adoptive parents. Affidavits are not adequate proof of legal custody.

The 2-year legal custody requirement may be fulfilled at the same time as the 2-year residency requirement. The 2-year residency requirement means the child must have actually lived with the adoptive parents for two full years. It may also take place before or after the adoption itself, or with just one adoptive parent.

The 2-year residency requirement is a recurring issue in proving that an adopted child is qualified as such for immigration.

In a case where a Filipino-American petitioned her adopted niece, the INS emphasized that it will inquire into whether the adoption was in good faith, and not for the purpose of facilitating the entry of the adopted child into the US. (*In the Matter of Marquez, February 23, 1990.*)

The immigration authorities in the Marquez case ruled that the petitioner did not satisfy the 2-year residency requirement despite having lived with the adopted child and her natural mother because it was the natural mother, not the petitioner, who exercised primary parental control over the child during the period of residency.

Among various documents that may be submitted to prove the 2-year residency requirement are school records, medical records or tax returns declaring the adoptive child as a dependent.

The adoptive parents can only file the petition for the adopted child with the USCIS when the 2-year legal custody and 2-year actual residence requirements are both satisfied.

Orphan Petition

An "orphan," on the other hand, is different from "adopted children" in that it does not have the 2-year legal custody and 2-year actual residency requirements.

In other words, there need not be an adoptive relationship between the orphan child and the prospective parent/s before a petition can be filed with the USCIS.

What must be proved for immigration purposes is that the orphan is adopted abroad or coming to the US for adoption.

In order to qualify for an immigrant petition as an "orphan," the child must be under 16 years old; and orphaned by reason of death or disappearance, loss of or abandoned by both parents. The

adoption of the orphan must be by husband and wife, or by one adoptive parent who must be at least 25 years old.

There are several finer points with respect to the legal qualifications of an "orphan" for purposes of immigration that would be best handled by an immigration lawyer.

The adoptive parent/s must prove to the USCIS that the orphan will be properly cared for. A home study is required in order to determine the parents' capabilities and their living conditions. USCIS offices have lists of home study agencies that are experienced in preparing reports for the purpose of petitioning orphans.