

# THE FILIPINO **EXPRESS**

November 20, 1999

---

## **Petitions for Foreign Orphans**

**By Reuben S. Seguritan**

An alien child who is considered "orphaned" may immigrate to the United States under an immediate relative status if the orphan has been adopted or is in the process of being adopted by a U.S. citizen. Although the standard process to obtain green cards for U.S. citizen relatives does not apply to orphan cases, special INS requirements and procedures have to be followed. This is because prospective parents not only have to comply with U.S. adoption laws but they have to adhere to foreign adoption laws as well.

Two separate determinations are involved in the orphan petition process: One determines the ability of the petitioner as a suitable parent and the other determines the eligibility of the child as an orphan.

**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. Prospective parents should make an exhaustive research regarding the adoption laws in their country.

**2. The child must be an eligible orphan.** Most countries consider a child to be legally abandoned when he is placed in the custody of a reputable child care agency or is unconditionally abandoned in an orphanage. On the other hand, under the 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 the child and efforts to locate them proved futile. All parental rights, obligations and claims to the child are given up.

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 decision for the single parent to release the child for adoption and emigration is irrevocable.

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

**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. The advanced processing application which focuses on the parent. This was designed to protect the orphan as it focuses on the ability of the prospective adoptive parents to provide a proper home environment and to determine their suitability as parents.