

## **A. Eligibility for Immediate Relative Status as an Orphan**

The vast majority of children who emigrate to the United States on the basis of their adoption or intended adoption by a U.S. citizen qualify for immediate relative status by satisfying the requirements for an orphan or Convention visa. As you can see from the above chart, many of the requirements for these two visas are similar, but there are also some significant differences in the eligibility criteria and process.

### **1. Facilitator Must be an ASP**

One of the most important safeguards established by the Hague Intercountry Adoption Convention is the requirement that certain critical functions related to intercountry placement must be performed by governmental entities or by agencies or individuals that have been specifically accredited or approved. Although the Hague Intercountry Adoption Convention itself applies only to the adoption of children from nations that are parties to the Convention, Congress extended these protections to children emigrating to the United States under orphan visas from non-Convention nations as well in the Intercountry Adoption Universal Accreditation Act of 2012 (UAA), Pub. L. 112-276, 126 Stat. 2466.. After July 1, 2014, only accredited agencies or approved persons (collectively referred to under U.S. law as adoption service providers [ASPs]) may facilitate intercountry adoptions of children emigrating to the United States through orphan or Convention visas. 42 U.S.C. §14925.

U.S. federal legislation and implementing regulations define the following six functions as “adoption services”:

- (1) identifying a particular child for adoption and arranging the adoption;
- (2) obtaining the consents necessary for termination of parental rights and adoption;
- (3) preparing and reporting home studies on prospective adopters and background studies on the child;
- (4) making a non-judicial determination of the child’s best interests and the extent to which a particular placement is appropriate;
- (5) post-placement monitoring until adoption finalization; and
- (6) assumption of custody and provision of care following a disruption. 42 U.S.C. § 14902; 22 C.F.R. 96.2.

Thus, after July 1, 2014, only public (governmental) authorities, accredited agencies, approved persons, or providers acting under the supervision of accredited agencies or approved persons may perform these six adoption services for children emigrating through orphan or Convention