

#### 4. Child's Eligibility for Orphan Visa

The second stage of the process of obtaining an orphan visa focuses on determining the child's eligibility. Prospective adopters typically work with their ASP to compile and forward documentation to a country of origin in order to arrange a placement. In some nations, documentation may be received and a referral made before an I-171H or favorable Notice of Action is actually issued, while other nations may refuse to arrange a placement for prospective adopters until they have received a copy of this documentation.. The legal requirements and practices of sending countries vary dramatically, so generalization is difficult, but ultimately, the prospective adoptive parents must obtain a decree of adoption or custody and permission for the child to emigrate from competent governmental authorities in the child's country of origin. Once a child has been identified, prospective adopters submit Form I-600 (Petition to Classify Orphan as an Immediate Relative).<sup>29</sup>

##### a. Age and Marital Status of the Child

To qualify for an orphan visa, the statute requires the child must be unmarried and under the age of sixteen when the petitioner files the I-600 (Petition to Classify Orphan as Immediate Relative) with USCIS. 8 U.S.C. §1101(b)(F).<sup>30</sup> The statute creates a sibling exception,

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study, other documentary evidence verifying orphan status and consents, and background and medical information on the adopters and the child; a pre-adoption investigation by an independent investigator must be made, and the prospective adopters must appear for examination before a judge, who, if satisfied, will issue a pre-adoption certificate that the adoption appears to be in the best interests of the child. Because federal law now requires an ASP to facilitate the adoption of children immigrating through orphan visas, it appears the statute could only apply in rare cases in which the adoption is facilitated by an approved person.

<sup>29</sup> See e.g., U.S. Dep't of State, *Non-Hague Visa Proces*, at <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Adoption-Process/immigrant-visa-process/non-hague-visa-process.html>. For more detail regarding where the Form I-600 should currently be filed, see Dept. Of State, Bureau of Consular Affairs, *Non-Hague Adoption Process*, at <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Adoption-Process/how-to-adopt/non-hague-adoption-process.html>.

<sup>30</sup> In *In re [Name Redacted]*, 2011 WL 5023704 (INS) (AAO April 5, 2011), the Administrative Appeals Office created an exception, to promote consistency with Convention regulation 8 C.F.R. 204.313(c)(3), which provides:

If the Form I-800A was filed after the child's 15th birthday but before the child's 16th birthday, the filing date of the Form I-800A will be deemed to be the filing date of the Form I-800, provided the Form I-800 is filed not more than 180 days