

by the U.S. consulate to perform immigrant visa examinations. If everything is in order, the consular officer issues an IR-3 visa for a child who has been adopted abroad by both adopting parents and an IR-4 visa, entitling the child to enter as a legal permanent resident, for a child who will be adopted in the United States.⁴⁵

Even if an adoption took place in the country of origin, the USCIS will require that the child be readopted in the United States if the unmarried adopter or both spouses of a married couple did not personally see the child prior to the adoption, or if the adoption abroad was not "full and final," terminating the rights of the birth parents. 8 C.F.R. §204.3(c)(1)(iv). Some countries, particularly in Latin America, utilize what is sometimes referred to as a "simple" adoption, which does not fully terminate the rights of the birth parents.⁴⁶

The denial of a petition for either a Convention or an orphan visa may be appealed to Office of Administrative Appeals⁴⁷ and subsequently to federal court.

6. Options

For families like the Renos who have adopted a child overseas and then found that the orphan petition was denied, there are some options, though none of them are easy.

(1) *Adopted Child Visa*. As explained in Section II.C. below, at least one of the prospective parents could fulfill the requirements of the adopted child visa by residing with the child outside of the United States for two years and having legal custody of the child for two years, and subsequently applying for an "adopted child" visa.

(2) *Advance Parole*. If an orphan petition is denied, adoptive parents may seek advance parole to permit a child to enter the United States pending completion of the requirement of two years of residence and legal custody, prior to petitioning for an adopted child visa. Advance parole has been granted in unusual or compelling circumstances, particularly for a child needing urgent medical care, for humanitarian or public interest reasons. Sarah Ignatius and Elisabeth Stickney explore this option in their treatise, *Immigration Law and the Family* § 13:34 (2019 ed.):

One possibility is to seek humanitarian parole, which the DHS is generally unwilling to grant absent severely compelling circumstances. In the past, the INS

⁴⁵ See USCIS, *Your New Child's Immigrant Visa*, at <https://www.uscis.gov/adoption/bringing-your-internationally-adopted-child-united-states/your-new-childs-immigrant-visa>.

⁴⁶ Sullivan, *supra* note 24, at n.169 and accompanying text.

⁴⁷ See *supra* note 19.