

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

See Section II.A.1. for a detailed discussion of this requirement, which was originally mandated by art. 22 of the Convention and, as of July 1, 2014, is not required under U.S. law for both orphan and Convention visas.

## **2. Child Must Be Emigrating from a Convention Nation**

To qualify for a Convention visa, the child who has been or is to be adopted must be emigrating to the United States from one of the other 100 nations that are a party to the Hague Intercountry Adoption Convention. 8 U.S.C. §1101(b)(1)(G)(i). Generally, U.S. regulations regard a child as habitually resident in the country in which the child is a citizen, although children will be regarded as habitually resident outside of their country of citizenship if their actual residence is in another nation and their situation is sufficiently stable for the Central Authority or another competent governmental authority of that nation to determine the child is properly within its jurisdiction. A child is not habitually resident in any nation in which the child resides temporarily or to which the child travels as a prelude to or in conjunction with an adoption or the child's immigration to the United States. 8 C.F.R. § 204.303(b). [See Section II.C.4 below for a discussion of the interaction of this regulation with a petition for an "adopted child" visa under Form I-130 and *Fingerson v. Dep't of Homeland Sec.*, 198 F. Supp. 3d 786 (W.D. Ky. 2016), which addressed this issue.]

Convention visas will not be granted for children physically in the United States unless the petitioner complies with all requirements for obtaining a Convention visa AND either adopt(s) the child in the Convention country, or else, after having obtained custody of the child under the law of the Convention country for purposes of emigration and adoption, adopt(s) the child in the United States. U.S. regulations do not per se require the child's actual return to the Convention country; but instead the decision whether to permit the child's adoption without the child's return is a matter to be determined by the Central Authority of the country of the child's habitual residence.

However, approval of the Petition to Classify Convention Adoptee as an Immediate Relative (Form I-800) does not alleviate the child's ineligibility for adjustment of status if the child is in the United States without inspection or is otherwise ineligible for adjustment of status. In such cases, the Form I-800 might be provisionally approved only if the child will leave the United States after the provisional approval and apply for the visa abroad before the final approval of the Form I-800. 8 C.F.R. § 204.309(b)(4).

## **3. Prospective Adopter's Eligibility**

Unlike the orphan visa process, which permits the petitioner to seek a determination of