

The statute itself also creates a sibling exception, permitting a child under the age of eighteen to qualify if he or she is the birth sibling of a child under sixteen who is or will be adopted by the same parents. 8 U.S.C. §1101 (b)(G)(iii). To qualify as siblings, the adoptees must share at least one biological parent. Thus, non-biological siblings adopted in the country of origin by the same adoptive parent do not qualify for the sibling exception.⁵³

Because the Convention adoptee must satisfy the definition of "child" under 8 U.S.C. §1101 (b)(1), he or she must be under 21 at the time of immigration to the United States.⁵⁴

b. Meeting the Statutory Criteria for the Birth Parents' Circumstances and Adoption Safeguards under the Convention

Congress approved somewhat more lenient Convention standards regarding the birth parents' circumstances, in the hope that the additional safeguards provided in the Convention, the Intercountry Adoption Act (IAA), and its implementing regulations would deter some of the abusive practices that the more restrictive orphan restrictions were intended to prevent. A child is eligible for a Convention visa if:

- (1) the child's parents or the sole or surviving parent or legal custodian has freely given written, irrevocable consent to termination of the parent's legal relationship with the child and to the child's emigration and adoption; and
- (2) if the child has two living parents, they are incapable of providing proper care for the child; and
- (3) USCIS determines that the child's relationship with the birth parents has been terminated and that the purpose of the adoption is to form a bona-fide parent-child relationship. In assessing this final factor, the statute provides that Secretary of Homeland Security may consider whether there is a petition pending to confer immigrant status on one or both of the birth parents. 8 U.S.C. § 1101(b)(1)(G).

The statutory criteria for a child to be eligible for a Convention visa are therefore broader than the criteria for an orphan visa in two ways:

⁵³ See Ignatius & Stickney, *supra* note 31, at § 13:17, citing Memorandum from Michael Pearson, Exec. Assoc. Comm'r, INS, HQADN 70/8.3 (entitled: "Guidance on Processing Petitions for Adopted Alien Children Less Than 18 Years of Age Considered a Child Under the Immigration and Nationality Act through Public Law 106-139" (Nov. 13, 2000), reprinted in 78 Interpreter Releases 353 (Feb. 5, 2001); and § 13:44.

⁵⁴ See 7 Immigration Law Service 2d PSD Foreign Affairs Manual 502.3 (Westlaw Aug. 2019 Update), 9 FAM 502.3. Adoption-based Classifications and Processing.