

appears to qualify for a visa, the consular officer sends an Article 5/17 letter to the Central Authority of the country of origin with notification that the requirements of article 5 of the Convention are satisfied, i.e., the petitioners are suitable to adopt, they have been appropriately counseled, and the child will be permitted to immigrate to the United States.<sup>72</sup>

The petitioner may adopt or obtain legal custody of the child only after the Article 5/17 letter is issued. If only one spouse travels to the foreign nation and adopts the child, the other spouse may adopt the child in the United States after the child is admitted. 8 C.F.R. § 204.313 (h)(2).. After an adoption or grant of custody has occurred in the Convention country, that country will issue an article 23 certification, which may be part of the adoption or custody decree itself, certifying compliance with the Convention. Petitioners must obtain a birth certificate and passport from the country of origin, because the child is not yet a U.S. citizen.<sup>73</sup>

When the article 23 certification is sent to the consular officer at the U.S. Embassy or Consulate, a final visa interview will be scheduled, and the valid adoption or custody decree is presented. At this interview, if no ineligibilities are found and the Convention process was followed correctly, the consular officer will grant final approval of the I-800 petition and attach a Hague Adoption Certificate (HAC) to the adoption decree or a Hague Custody Declaration (HCD) to the custody decree, certifying compliance with the Convention and the IAA. An IH-3 visa will be issued to a child who has been adopted in the country of origin, who will then automatically acquire citizenship upon entering the United States with the adoptive family. An IH-4 visa is issued to a child who will be adopted in the United States, who will then immigrate as a lawful permanent resident and become a citizen automatically if adopted before the age of eighteen.<sup>74</sup>

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

### **C. “ Adopted Child” Visa**

A third way for U.S. citizens to seek immediate relative status for an adopted child is by filing Form I-130 (*Petition for Alien Relative*). My reference to this as an “adopted child” visa, a nomenclature typically used by commentators, is admittedly a bit confusing because as all three types of visas we discuss today are for children who have been or are about to be adopted.

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<sup>72</sup>See U.S. Dep’t of State, *Hague Visa Process*, at <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Adoption-Process/immigrant-visa-process/us-hague-convention-adoption-and-visa-process.html>.

<sup>73</sup> *Id.*

<sup>74</sup> See 8 C.F.R. § 204.313(h); *Hague Visa Process*, *supra* note 72.