

Nevertheless, this particular visa requires that the child must have already been adopted and in the legal and residential custody of the petitioner for two years. However, as you can see from the chart on page 5, it circumvents many of the other requirements of the orphan and Convention visas. There is no requirement that the adoption be facilitated by an ASP. There are no age requirements for single adopters. There are no specific requirements established by Congress or federal regulations for a home study, although an adoption in a foreign country would presumably require some equivalent assessment of the suitability of the adopters and an adoption in the United States would require a home study satisfying the criteria of the state in which the adoption took place. USCIS does not make its own determination that the child will receive proper care, and the specific Convention requirements and statutory criteria for classification of the child as an orphan do not apply.

Thus, in some ways, obtaining an "adopted child" visa is an easier process, because the circumstances of the child's birth family need not satisfy the orphan or Convention criteria and submission of a home study is not part of the USCIS process (although some type of home study would normally have been required by the country or U.S. state in which the adoption took place). On the other hand, obtaining an "adopted child" visa for a child residing abroad usually involves residing outside of the United States with the child for at least two years, and thus is normally utilized only by adoptive parents living abroad for other reasons. It is also utilized as a backup for parents whose orphan petitions were not approved, such as when a child is adopted before turning 16, but an orphan petition is not filed before the child turns 16, and it can be particularly useful if the parents can obtain advance parole for the child whose orphan visa application is unsuccessful for other reasons, as described in Section II.A.6).

Perhaps of greatest interest to private immigration attorneys, the adopted child visa can under some circumstances be used on behalf of children residing in the United States, as discussed below in Section II.C.3.

In order to be admitted as an immediate relative under this category, the following criteria must be satisfied:

- 1) the child must have been adopted under the age of 16 (or if a sibling of such a child, then under the age of 18) by a U.S. citizen in an adoption that is valid in the country where it took place; and the petition must be filed for the unmarried child before the child is age 21; and
- 2) the child must have been in the legal custody of and have resided with the adoptive parent or parents for at least two years. 8 U.S.C. 1101(b)(1)(E).