

which rejected the rule in *Amponsah v. Holder*, 709 F.3d 1172 (9th Cir. 2013).⁷⁸ Although the BIA modified its blanket rule in mid-2015 in *Matter of Huang*, 26 I.&N. Dec. 627 (BIA 2015) to recognize nunc pro tunc adoption orders if the petition was filed before the adoptee's 16th birthday, the State entering the order expressly permitted an adoption decree to be dated retroactively, and the State court entered such a decree consistent with that authority, the Fourth Circuit noted Ojo's nunc pro tunc order did not meet these criteria. Nevertheless, the Fourth Circuit held, adoptions in the United States are conducted by state courts, and therefore a child is "adopted" for purposes of 8 U.S.C. § 1101(b)(1)(E), on the "effective date of the adoption as set forth in the relevant state court instruments."⁷⁹

More recently, in *Brown v. Fedoruk*, 313 F. Supp. 3d 1252 (W.D. Wash. 2018), a Washington District Court similarly rejected the BIA's *Huang* restrictions on nunc pro tunc orders, agreeing with the Fourth Circuit that the date of the adoptee's adoption was the date set forth in the nunc pro tunc order issued by the Washington State court that entered the adoption order. Moreover, assessing petitioner's claim that the BIA's *Huang* criteria violated equal protection by treating adoptees that live in states expressly authorizing backdating adoption decrees from those whose decrees were backdated based on their respective State's common law concept of nunc pro tunc adoption decrees, the district court found that applying rational relationship scrutiny, the BIA's holding in *Huang* was not rationally related to a legitimate state purpose.

b. Validity of Adoption Decree

To qualify for an immediate relative visa under 8 U.S.C. §§1101 (b)(1)(E) as an adopted child, the adoption must be valid in the country or state in which it occurs. To be considered legally valid for immigration purposes, an adoption must (1) be valid under the law of the country or place granting the adoption, (2) create a legal parent-child relationship between someone who is not already the child's parent and the child; and (3) terminate the parent-child relationship with the child's prior legal parents.⁸⁰ Even if the adoption would be valid if it had occurred in the United States, it will not be a valid adoption for purposes of this visa if it was not valid in the nation where it occurred.⁸¹

⁷⁸ The Court noted that the 9th Circuit later withdrew this opinion based on the BIA's assurance that it was revisiting the *Cariaga/Drigo* rule, but then relied on it in *Ojo's proceedings in January 2015*.

⁷⁹ *Ojo*, 813 F.3d 533 at 541.

⁸⁰ Ignatius & Stickney, *supra* note 31 at §11.3. See also Foreign Affairs Manual, 9 FAM 502.3-2(B) §(b)(1), at <https://fam.state.gov/fam/09FAM/09FAM050203.html>.

⁸¹ E.g., *Matter of Garcia-Rodriguez*, 16 I. & N. Dec. 438, 1978 WL 32429 (B.I.A. 1987).