

customary adoption has been held sufficient to serve as a substitute for legal custody.⁸⁹

In addition, the petitioner must show that at least one of the adopting parents lived with the child for at least two years. The residence period, like the period of legal custody, can occur before or after the adoption, or some of both. 8 C.F.R. §204.2(d)(2)(vii)(B). The petitioner must submit evidence that he or she resided with the child in a familial relationship during this period and exercised parental control. To establish parental control, the adoptive parent may submit evidence that he or she owned or maintained the residence in which he or she lived with the child, financially supported the child, and provided day-to-day supervision, although other types of evidence might be relevant as well. *Id.* Most difficult are those situations in which the adoptive parent and child resided in the same home as the birth parent, which sometimes occurs in relative adoptions. In those cases, the burden is on the adoptive parent to prove that he or she exercised primary parental control during the period of residence. *Id.*

The two-year periods of legal custody and residency need not be coterminous.⁹⁰ Moreover, neither the two-year period of custody nor the two-year period of residence need be uninterrupted. The statutory requirements will be fulfilled as long as there has been two years in the aggregate of both legal custody and of residence. 8 C.F.R. §204.2(d)(2)(vii)(C). However, these two requirements are the means of ensuring that a bona fide parent-child relationship exists.⁹¹ The BIA has scrutinized these requirements in order to prevent fraudulent adoptions entered solely to obtain an immigration status. For example, in *Matter of Reputan*, 19 I. & N. Dec. 119, 122 (B.I.A. 1984), the Board denied the visa petition filed by an aunt who alleged she had resided with her adopted niece and nephew in the Philippines for seven periods of various durations totaling twenty-seven months in the aggregate over a sixteen-year time span. Noting that "residence" is defined by 8 U.S.C. §1101(a) as a person's "principal, actual dwelling place in fact, without regard to intent," the Board found periodic visits to a child's home insufficient to satisfy the two-year residency requirement.

3. Process

To seek an adopted child visa for a child residing outside of the United States, petitioner must file a Form I-130 (Petition for Alien Relative),⁹² along with a copy of the child's adoption

⁸⁹ *Kaho v. Ilchert*, 765 F.2d 877 (9th Cir. 1985). See Ignatius & Stickney, *supra* note 31, at §13:8.

⁹⁰ *Matter of Cho*, 16 I. & N. Dec. 188 (B.I.A. 1977). See also Foreign Affairs Manual, 9 FAM 502.3-2(B) §(d)(3), at <https://fam.state.gov/fam/09FAM/09FAM050203.html>.

⁹¹ Sullivan, *supra* note 24, at n.279 and accompanying text.

⁹² See USCIS, *Bringing Your Internationally Adopted Child to the United States*, at <https://www.uscis.gov/adoption/bringing-your-internationally-adopted-child-united-states>.