

decree, proof of the adoptive parents' U.S. citizenship or lawful immigration status, and evidence that the two year residency and legal custody requirements have been fulfilled. 8 C.F.R. §204.2(d)(2)(iv).

The federal statute authorizing adopted child visas explicitly clarifies that no natural parent or prior adoptive parent of any child classified as an immediate relative under 8 U.S.C. § 1101(b)(1)(E) shall thereafter receive any immigration benefits as a result of the parent's prior parental relationship. The Board of Immigration Appeals has taken the position that a child immigrating under an adopted child visa may not later petition on behalf of a biological sibling,⁹³ although federal courts have split on this issue.⁹⁴

4. Use of Adopted Child Visa for Children Adopted in the United States

As illustrated in the *Ojo* case discussed above, 8 U.S. C. 1101(b)(1)(E) is a route to obtaining permanent residence as an immediate relative and U.S. citizenship for children who have entered the United States in nonimmigrant status and are adopted in the United States by U.S. citizens. As will be discussed in Section II.C.5, below, however, an adopted child visa may not be used for such children if they were habitually resident in a nation that was party to the Hague Intercountry Adoption Convention immediately prior to the adoption.

Foreign-born children may enter the United States as visitors with their non-citizen parents or relatives who leave them in this country with relatives or friends, or they may enter on student visas. If the parents later consent to their adoption by a U.S. citizen, the child may be able to obtain immediate relative status if the requirements of 8 U.S.C. § 1101(b)(1)(E) are satisfied, i.e., the child was adopted before his or her 16th birthday, the U.S. citizen adoptive parent has had legal custody of the child for two years (before or after the adoption) and the child has resided with the adopted parent for two years (before and/or after the adoption).⁹⁵ Obtaining legal custody or an adoption in a U.S. state court, of course, will not legalize a child's stay in the U.S. for immigration purposes, if the child is residing in the United States without legal immigration status because it expired or because the child entered without inspection.⁹⁶

⁹³ Matter of Li, 20 I. & N. Dec. 700, 1993 WL 424163 (B.I.A. 1993).

⁹⁴ Compare *Gee v. I.N.S.*, 875 F. Supp. 666 (N.D. Cal. 1994) with *Young v. Reno*, 114 F.3d 879 (9th Cir. 1997). See Ignatius & Stickney, *supra* note 31, at § 13:14.

⁹⁵ Hollinger, *supra* note 10, at § 11:03.

⁹⁶ AllLaw, *Can You Adopt an Undocumented Immigrant and Get Them a Green Card*, at <https://www.alllaw.com/articles/nolo/us-immigration/adopt-undocumented-illegal-immigrant-get-green-card.html>.