

The U.S. citizen petitioner must file Form I-130 (Petition for Alien Relative) for the unmarried child who is under the age of 21 and an adopted child who entered the United States legally should at the same time file an application to adjust status to permanent resident status (Form I-485) under 8 U.S.C. §1255.⁹⁷ If the child entered the United States without inspection, the petitioner can file Form I-130 and if that is approved, the case will be transferred to a U.S. consulate abroad, where a visa interview will be required.⁹⁸ Approval of a Form I-130 will not guarantee in all circumstances that a child can acquire permanent residence through adjustment of status or a visa interview,⁹⁹ but it is a route worthy of consideration that has been helpful to extended family members in many immigrant communities and others wishing to adopt foreign-born children in the United States.¹⁰⁰

With particular concern for the protection of adoptees who reside in the United States, Congress created a battered child exception to the two-year custody and residence requirements in 8 U.S.C. § 1101(b)(1)(E), permitting an I-130 to be filed for a child who has not satisfied that criteria but has been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household. It appears that the goal of this provision was to ensure that adopted battered children would not be deterred from reporting abuse by fear of deportation on the grounds that their two-year periods had not yet been satisfied.¹⁰¹

5. Adopted Children Habitually Resident in Convention Nations

A U.S. citizen may seek a visa under 8 U.S.C. §1101(b)(1)(E) for a child who was adopted in a nation that is party to the Hague Intercountry Adoption Convention if the petitioner has obtained legal custody and resided with the child outside of the United States for the requisite two-year period.¹⁰² This is because federal regulations specifically define the habitual residence

⁹⁷ Hollinger, *supra* note 10, at § 11:03. *See also* Zhang & Associates, *The Immigration Procedure for an Adopted Child*, at <https://www.hooyou.com/adoption/regular-procedure.html>.

⁹⁸ AllLaw, *supra* note 94.

⁹⁹ *See* Hollinger, *supra* note 10, at § 11:03[2][b].

¹⁰⁰ *See* Ignatius & Stickney, *supra* note 31, at §13.41.

¹⁰¹ *See also* 8 C.F.R. § 204.2(e).

¹⁰² 8 C.F. R. 204.2 (d)(2)(vii)(D) provides:

(D) On or after the Convention effective date, as defined in 8 CFR part 204.301, a United States citizen who is habitually resident in the United States, as determined