

unrelated to adoption.<sup>104</sup> Rejecting this argument, the federal district court upheld the validity of the federal regulations, finding that 8 C.F. R. 204.2 (d)(2)(vii) promoted Congressional goals by avoiding foreign relations consequences if a foreign national temporarily in the United States was adopted without the consent of the child's country of origin, and by preventing avoidance of the Convention's safeguards by looking to the child's citizenship rather than the child's temporary location. *Id.* at 793.

Thus, instead of obtaining an adopted child visa through Form I-130, a petitioner such as Mr. Fingerson and his wife would need to seek approval through Form I-800A and then adopt the child in the Convention nation or seek a custody order from that nation for the purpose of adoption in the United States.<sup>105</sup> At this point the child may be eligible for adjustment of status or, if the child entered the United States without inspection, the child will need to go abroad to apply for a visa at a U.S. consulate after provisional approval of the I-800.<sup>106</sup>

Moreover, if an adoption has taken place before the I-800 is approved, the I-800 will be denied. In such a case, the adoption must be voided, vacated, annulled, or otherwise terminated so that the petitioner can proceed by filing an I-800 A and subsequently an I-800. After provisional approval of Form I-800, the petitioner may then seek a new adoption order. 8 C.F.R. § 204.309(b)(1).<sup>107</sup>

As an alternative to voiding the adoption, the U.S. citizen may attempt to seek a

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<sup>104</sup> The child was adopted by petitioner, who had previously been named his legal guardian, after his birth mother's health deteriorated a year after the child's arrival in the United States.

<sup>105</sup> Ignatius & Stickney, *supra* note 31, at §13.41.

<sup>106</sup> *Id.* Based on the Preamble to regulations, 72 Fed. Reg. 56832, 56834 (Oct. 4, 2007), the authors observe:

In some cases, then, the child may be eligible to adjust status in the U.S. since nothing in the regulations requires the child to return to the country of citizenship. However, the I-800A and I-800, by themselves, do not grant the child any status in the U.S. Thus, if the child entered the U.S. without inspection, after provisional approval of the I-800, the child will need to go abroad and apply for a visa at a U.S. consulate.

*See also* USCIS, Policy Memorandum PM 602-0095, *Criteria for Determining Habitual Residence in the United States for Children from Hague Convention Countries*, November 20, 2017, at 5.

<sup>107</sup> Ignatius & Stickney, *supra* note 31, at §13.41.