

determination from the Central Authority or another competent governmental authority of the child's country of citizenship documenting that the child was no longer habitually resident in that country at the time of adoption.¹⁰⁸ If the adoption order (or amended order) expressly states that the Central Authority advised the U.S. court with jurisdiction over the adoption that it (1) is aware of the child's presence in the United States and of the proposed adoption, and (2) has determined that the child is not habitually resident in the child's country of origin, then USCIS may approve an I-130 petition for the child. In these cases, a written statement from the Central Authority must accompany the Form I-130 and the adoption order (or amended order). Alternatively, if the Central Authority considers the child to be habitually resident in the country of origin, despite the child's presence in the United States, the USCIS must deny the I-130 petition and the petitioner must proceed through the Convention visa process.¹⁰⁹

Commentators have observed, however, that statements from a Central Authority regarding a child's habitual residence can be difficult to obtain, particularly if the child left the country of origin to escape abuse, violence, or political turmoil.¹¹⁰ When the Central Authority in the country of origin cannot or will not take a position regarding whether the child is habitually resident in that nation, under some circumstances the USCIS will make such a determination. If the petitioner cannot obtain a statement from the Central Authority of the country of origin because:

- The child's COO does not issue statements of habitual residence, as confirmed by the Department of State; or
- The Central Authority of the COO has informed the petitioner in writing that it will not make a determination on habitual residence upon the petitioner's request; or
- The Central Authority of the COO has not issued a statement of habitual residence for at least 120 days following the petitioner's request to obtain such a statement.;

then the USCIS has taken the position that it may approve Form I-130 if it finds:

1. At the time the child entered the United States, the purpose(s) of the entry were for reasons other than adoption (intent criteria);
2. Prior to the U.S. domestic adoption, the child actually and physically resided in the United States for a substantial period of time, establishing compelling ties in the United States, (actual residence criteria); and

¹⁰⁸ USCIS, Policy Memorandum PM 602-0095, *supra* note 106, at 3-5.

¹⁰⁹ *Id.*

¹¹⁰ Hollinger, *supra* note 10, at § 11:03[2][b].