

3. Any adoption decree issued after February 3, 2014, confirms that the Central Authority of the country of origin was notified of the adoption proceeding in a manner satisfactory to the court and that the Central Authority did not object to the proceeding with the court within 120 days after receiving notice or within a longer period of time determined by the court (notice criteria).<sup>111</sup>

### **III. Family Preference Visas for Children Adopted Transnationally by Permanent Residents**

Although lawful permanent residents of the United States, as non-citizens, are not eligible to seek immediate relative status for adopted children under orphan, Convention, or adopted child visas, they are eligible to file Form I-130 to seek a family-sponsored second preference visa for their children or unmarried sons or daughters of any age who satisfy the criteria for adopted children..8 C.F.R. § 204.2(d)(1)((2)(ii)).<sup>112</sup> As with I-130 petitioners who are U.S. citizens, the petitioner who is a lawful permanent resident must establish that the adoption took place before the child's sixteenth birthday and that the child has been in the legal custody and resided with the adoptive parent or parents for at least two years. *Id.* [See Section II. C. above for a detailed discussion of these criteria.] Although second preference visas are subject to numerical limitation and may entail a lengthy wait for entry, this is normally the only avenue available to obtain an immigrant visa for a child adopted after the parent obtains lawful permanent residence. 8 U.S.C. §1151(a).<sup>113</sup>

An adopted child "accompanying" or "following to join" a parent who is also immigrating with a family-sponsored, employment-related, or diversity immigrant visa is admitted in the same preference category as the parent and is considered a derivative beneficiary for whom no separate adopted child petition must be filed. 8 C.F.R. §204.2(d)(4). Derivative status was created to avoid separation of nuclear families who are attempting to immigrate. A child adopted after the parent obtains lawful permanent residence, however, is not entitled to derivative status and it is these children for whom adopted child visas are filed..<sup>114</sup>

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<sup>111</sup> USCIS, Policy Memorandum PM 602-0095, *supra* note 106, at 3-5.

<sup>112</sup> See Hollinger, *supra* note 10, at § 11:03[2][b]. Thus, Form I-130 may be filed to obtain these visa for adopted children at any time and need not be filed before the twenty-first birthday.

<sup>113</sup> See Hollinger, *supra* note10, at 11-23.; David Weissbrodt, Immigration Law and Procedure 122 (5th ed. 2005)

<sup>114</sup> *Id.*