

Special Report: Bringing Family Members to the United States



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People want to be close to their family. U.S. law recognizes this, and provides for ways for people living in the United States to apply for permission to allow family members to live in the United States as well. The rules, however, can be complex. The rules also differ depending on whether the person applying for permission for the family member to come to the United States is a U.S. citizen or a legal permanent resident.

This report provides an overview of U.S. immigration law as it applies to those who want to bring family members into the United States to live permanently. This report is only meant to be informative of U.S. immigration law in general. Reading this report does not take the place of consulting with a lawyer familiar with immigration law. After reading this report, if you want to file a petition for permission to bring a family member into the United States, you should consult with a knowledgeable lawyer or other professional familiar with U.S. immigration law.

A Word on Terminology

U.S. law uses the word “alien” to refer to a foreign-born person who is not a U.S. citizen. Because this is the correct legal term, it is the term used in this report.

Also, when referring to U.S. Government agencies with long names, it is often easier to use just the agency’s initials. For this reason, the U.S. Citizenship and Immigration Service, one of the primary agencies involved in immigration issues, will be called “USCIS” throughout this report.

A Word on Filing Paperwork

Applying for a visa requires a lot of paperwork. There are many different U.S. Government agencies involved in the process, and many different forms. The first step in applying for a visa is often figuring out which of the forms to use.

However, filling out and filing the right form is often not enough. Instead, the U.S. Government will want to make sure that the information stated in the form is true. This means that a person filing a visa petition will have to give the Government copies of documents that prove that the information written in the form is true.

For example, if the person filing a visa petition is a U.S. citizen, that person will be required to provide a copy of some document proving that he or she is in fact a U.S. citizen. A person born in the United States can simply include a photocopy of his or her birth certificate, showing that he or she was born in the United States. If a person is a U.S. citizen by naturalization, that person will need to include a photocopy of his or her naturalization certificate.

Some things may be a little more complicate to prove. For example, if a U.S. citizen is applying for a visa for his sister, but his sister has a different last name, the U.S. citizen will likely need to include with the visa petition a number of documents. The U.S. citizen could show that his sister changed her last name when she married by including a photocopy of his sister’s birth certificate, and a photocopy of her marriage certificate.

Another difficult example could be where the U.S. citizen’s mother remarried and had a

daughter from her second marriage. To prove that the alien is in fact his sister, the U.S. citizen may need to file a photocopy of his birth certificate (which shows the name of his mother), proof of his mother's remarriage (a photocopy of her second marriage certificate), and his sister's birth certificate.

When the visa petition does not have enough proof, USCIS will request more information. USCIS will send out a "Request for Evidence" on Form I-797 (also called an RFE by immigration professionals). The Request for Evidence will say what USCIS needs. For example, the Request for Evidence could request photocopies of additional documents, such as birth certificates or marriage certificates. To complete the visa petition, this information must be filed. If it is not, USCIS will deny the application.

Some facts will be more difficult to prove. In some cases, the immigrant may need to prove good moral character. No single document may be able to prove good moral character. Instead, it may be necessary to have people who know the alien to provide written testimony, called an affidavit. In the affidavit, the person would state in writing the facts that show that the alien has good moral character. For example, if the alien is active in his or her church, the pastor or other church members may be able to provide affidavits about the alien's church activities to show that the alien has good moral character.

Two things are important to remember about including copies of documents along with the required forms. The first is that unless the U.S. Government specifically requests the original, it is generally a good idea to send a photocopy. The original should be kept in a safe place. The U.S. Government will usually want to see the originals in a later face-to-face interview.

The second thing is that all documents filed with any official forms must be translated into English. For example, if a birth certificate is written in Spanish, the form must include a photocopy of the original Spanish birth certificate and an English translation of the birth certificate. The entire document must be translated into English. USCIS will reject a translation if it only translates a part of the document. Also, the translated document must be accompanied by a certification from the person who did the translation that he or she is competent to translate from the original language into English, and that the document is a correct and true translation.

Family-Based Visas

There are generally two ways in which a family member can immigrate to the United States. Family members can immigrate either as an immediate relative of a U.S. citizen, or through the preference system. Immediate relatives of U.S. citizens will be able to become permanent residents quicker. However, those who immigrate through the preference system will have the chance to bring a spouse and children with them as "derivative beneficiaries."

Immediate Relatives

Who Is an Immediate Relative?

There are three types of immediate relatives: (1) spouses of U.S. citizens; (2) minor children of U.S. citizens; and (3) parents of U.S. citizens, if the citizen is 21 years old or older.

Spouse

For marriages, the first requirement is that the marriage must be legally recognized in the country or U.S. state where the marriage was performed. To prove this, the U.S. citizen will be required to show legal documentation, such as a marriage certificate. As discussed later, the couple should be prepared to show proof that they have a real marital relationship.

The U.S. Government does not take kindly to the idea of people marrying just for immigration benefits. In order to qualify for immigration to the United States as a spouse, the marriage must be *bona fide*. That means it must be a real marriage. A marriage entered into solely for immigration purposes is “marriage fraud.” *Marriage fraud will cause an alien to be permanently barred from coming to the United States. It is also a crime. A U.S. citizen who commits marriage fraud to try to assist an alien to immigrate to the United States may also face criminal charges.*

The death of a U.S. citizen spouse does not necessarily mean that the alien spouse cannot immigrate as an immediate relative. If the alien spouse was married to the U.S. citizen for at least two years, the alien spouse will be considered an immediate relative for two years after the spouse’s death, or until the alien spouse remarries, whichever comes first. The widowed alien can file a petition on his or her own behalf.

Child

For children of U.S. citizens, the word “child” has a specific definition under U.S. law. A child must be under 21 years of age and unmarried. A person who is divorced or widowed at the time of the filing of the petition is considered “unmarried.” A child can include an adopted child. However, there are special rules surrounding adopted children which will be discussed later.

A stepchild can be a child under U.S. law if the U.S. citizen married the parent before the child reached the age of 18.

Special issues can arise when the child was born out of wedlock. Generally, if a child is born out of wedlock, and the U.S. citizen is the mother, proving the parent-child relationship is less problematic. But, if the U.S. citizen is the father, the father must show that he has a *bona fide* relationship with the child before the child reaches the age of 21. The father must be able to show that he provided support for the child, and played a role in the child’s instruction and welfare.

Parent

For parents of a U.S. citizen, the U.S. citizen must be at least 21 years old before the parents can immigrate as immediate relatives. The U.S. citizen can petition for step-parents, if the step-parent relationship began before the U.S. citizen reached the age of 18. A parent can also include an adoptive parent, provided the adoption occurred before the U.S. citizen reached the age of 16, and the U.S. citizen lived with the adoptive parent for at least two years. If a U.S. citizen has been adopted, that person cannot petition for a natural parent who gave up parental rights.

What Is the Process?

To apply for a visa for an immediate relative, a U.S. citizen files a visa petition, known as Form I-130. In the visa petition, the petitioner must prove that the beneficiary is an immediate relative, and that the petitioner is a U.S. citizen. The I-130 should include all required supporting documentation, such as copies of passports, birth certificates and marriage certificates. The petitioner files the I-130 with the USCIS Service Center appropriate for the petitioner's place of residence, unless the immediate relative is present in the United States and is eligible for "adjustment of status."

Adjustment of status allows the immediate relative to become a permanent resident while inside the United States instead of applying for a visa at a U.S. consulate overseas. If the immediate relative has been admitted to the United States lawfully, the visa petition may also include an Application for Adjustment of Status (Form I-485).

All immigrants are required to have been vaccinated against mumps, measles, rubella, polio, tetanus and diphtheria, unless the vaccinations are not medically appropriate or are contrary to the immigrant's religious or moral beliefs.

For aliens over the age of 14, the Application for Adjustment of Status (I-485) must be accompanied by a Biographical Data Form (Form G-325A). The I-485 must also be accompanied by 2 passport-style photographs for each immediate relative, the sealed results of a medical examination by a civil surgeon designated by USCIS (Form I-693), proof of the appropriate vaccinations or exemption from vaccinations, a copy of the immediate relative's I-94 and passport, an Affidavit of Support from the petitioner (Form I-864), and all appropriate filing fees.

If the immediate relative is inadmissible under U.S. law, the Application for Adjustment of Status must also include an Application for a Waiver of a Ground of Inadmissibility (Form I-

Inadmissibility is the legal term that means a person cannot come into the United States. The grounds of inadmissibility include: certain diseases such as AIDS and tuberculosis, no evidence of vaccinations, certain mental disorders, drug addiction, alien smuggling, visa or document fraud, likely to become a public charge, danger to national security, unlawful entry or presence in the United States in some instances, and certain criminal convictions.

601) with the appropriate filing fee. Whether a ground of inadmissibility can be waived is left to the judgment, or discretion, of the USCIS official reviewing the case.

If the immediate relative wants to work in the United States, the Application for Adjustment of Status must also include an Application for Employment Authorization (Form I-765) with the appropriate fee.

When filing any forms with USCIS, do not file originals of the supporting documents. File copies. Original documents can get lost in the mail or in the Government's filing system. Bring the originals to the interview. Also, be sure to make copies of all forms filed with USCIS, and keep them in a safe place.

USCIS will send the immediate relative a notice to be fingerprinted. The notice will have the time and location where the fingerprints will be taken. This appointment can be changed. But, it should be changed before the appointed time. If you reschedule the fingerprinting appointment, this could add months to the waiting time for the approval of the application. USCIS does not require fingerprints for aliens under age 14, or over age 80.

Once the Application for Adjustment of Status has been filed, the immediate relative must stay in the United States. If the immediate relative leaves the United States, the Government will consider the Application for Adjustment of Status abandoned, unless the immediate relative asks for permission to re-enter the United States before leaving. This is called advance parole. However, if the immediate relative has been present in the United States illegally (for example, by staying in the United States after the date found on the I-94 card), he or she may be barred from returning the United States, even if he or she received advance parole.

After submitting the I-130 and the I-485, with all of the required accompanying documents and fees, USCIS will schedule an interview. During the interview, a USCIS official will ask questions about the answers on all of the forms the U.S. citizen and the immediate relative filed with USCIS. If the visa petition is based on a marriage, the USCIS official will ask questions about the marriage to ensure that it is real. These questions can get rather personal. USCIS has been known to ask questions about the last Christmas or birthday gifts the spouses exchanged, where the couple last went on vacation, and the color of the drapes in the bedroom. USCIS may waive the interview for children under the age of 14.

In some cases, the USCIS official may approve the application at the interview. If the immediate relative brings his or her passport to the interview, and the USCIS official approves the application, the USCIS official may stamp the passport with proof of the applicant's permanent residence. The passport stamp is good for one year.

If the USCIS official does not approve the Visa Application at the interview, the applicant will receive a notice on Form I-181. This notice will state whether USCIS approved the application. An applicant who receives an approval notice can bring that notice with his or her passport to the

USCIS district office to receive a stamp in the passport that is proof of permanent residence.

If USCIS approves the application, it will send the applicant the permanent resident card (also known as the green card or Form I-551) by mail. This can take between several weeks and several months.

Temporary Visas for Immediate Relatives

The main advantages of being an immediate relative of a U.S. citizen is that the alien does not have to wait for a visa to become available, and can adjust status to a permanent resident inside the United States instead of applying at a U.S. consulate overseas. However, this means that the immediate relative must be lawfully present in the United States.

The alien must be careful in applying for a temporary visa to come to the United States. If you apply for a visitor's visa (called a B-1 visa for business people or a B-2 visa for tourists) you must not have an intent to stay in the United States permanently. If you obtain a visitor's visa, but intend to come to the United States in order to go through the adjustment of status process, the USCIS may conclude that you committed fraud in applying for the visitor's visa. Fraud makes you inadmissible.

Applying for a B-2 visitor's visa for the purpose of marrying a U.S. citizen will be considered visa fraud. In fact, if a person admitted to the United States on a non-immigrant visa other than a K-1 visa marries a U.S. citizen within 60 days of being admitted, USCIS will presume that visa fraud has occurred.

The United States solves this problem by making visas available for immediate relatives to allow them to enter the United States to file an application for adjustment of status. Temporary visas are available for the fiancé of a U.S. citizen, the unmarried children under the age of 21 of the fiancé of a U.S. citizen, and the spouse of a U.S. citizen.

Fiancé of a U.S. Citizen

The fiancé of a U.S. citizen can apply for a temporary visa to enter the United States for the purpose of marrying the U.S. citizen. This is called a K-1 visa. The K-1 visa lasts for 90 days. This means that the alien fiancé will have 90 days from the time that he or she is admitted to the United States to marry the U.S. citizen. Once married, the alien can either return to his or her home country to apply for permanent residency at a U.S. consulate, or apply for a green card in the United States using the adjustment of status proceedings.

A person is eligible for a K-1 visa if:

- engaged to a U.S. citizen,
- both the U.S. citizen and the alien fiancé are legally able to marry (both must

- be of legal age, any prior marriages must be terminated),
- the alien intends to marry the U.S. citizen after entering the United States (there must be some plans for the wedding ceremony before applying), and
- the alien fiancé met the U.S. citizen in person within 2 years before applying for the visa (unless meeting the U.S. citizen in person will cause extreme hardship to the U.S. citizen).

To apply for the K-1 visa, the U.S. citizen first completes a visa petition on Form I-129F, and submits the form along with supporting documents and the correct fee to the appropriate USCIS regional service center. Within a few weeks, the U.S. citizen should receive a written confirmation that USCIS received the petition. If USCIS needs more information, it will send the U.S. citizen a Request for Evidence on Form I-797. If the U.S. citizen does not provide the information or documents requested, the petition will be denied. Sometimes, USCIS will require an interview with the U.S. citizen before approving the visa petition.

Once USCIS approves the petition, it will send the alien fiancé an instruction packet. The fiancé will have four months to complete the process. The packet includes forms that the fiancé must complete and return to USCIS along with copies of any required documents. One of the required documents will be a police clearance certificate from every country where the fiancé has lived since the age of 16. The alien fiancé should submit copies of the required documents, and keep the originals to show the U.S. consular officer at the interview. The U.S. citizen will also be required to submit an Affidavit of Support (either Form I-134 or I-864) to show that he or she can support the fiancé once in the United States.

After the fiancé sends the completed forms back, the U.S. consulate will set up an interview. Before going to the interview, the fiancé will need to be examined by a civil surgeon and have fingerprints taken. The consulate will instruct the fiancé on how to complete these steps in the letter setting up the interview. There will be a fee for the medical examination. ***After the medical examination, the civil surgeon will give the fiancé a sealed envelope with the results of the examination. It is important that the fiancé keep the envelope sealed. Do not open it.*** An official from CBP will open the sealed envelope at the border when the fiancé enters the United States. The fiancé will also be required to bring 2 passport style photographs to the consulate interview.

When the consulate grants the visa, the fiancé will have 6 months to enter the United States. The CBP officer will open the sealed results of the medical examination, and determine whether there are any other grounds to deny admission to the United States. If everything goes well, the CBP officer will stamp the fiancé's passport, permitting the fiancé to remain in the United States for 90 days. When the fiancé arrives in the United States, he or she may apply for permission to work. The wedding should take place in enough time to allow the fiancé to apply for permanent residency during the 90 day period that the K-1 visa is good for.

To apply for permanent residence, the U.S. citizen and alien fiancé will **not** need to file a separate I-130 after the wedding. Rather, the U.S. citizen and alien fiancé can file the Application

for Adjustment of Status (Form I-485) as outlined above.

Unmarried Children Under the Age 21

The alien fiancé may also apply for a visa for any unmarried children under the age 21 to accompany him or her to the United States for the wedding. The visa is called a K-2 visa. The process for applying for a K-2 visa is similar to the process outlined above. After the wedding, the U.S. citizen will have a step-parent relationship with the children (if the child is under the age of 18), and can apply for the children to become permanent residents through an Application for Adjustment of Status.

Foreign Spouse of a U.S. Citizen

If a U.S. citizen marries an alien while overseas, the U.S. citizen can apply for a temporary visa to allow the alien spouse to enter the United States and go through the adjustment of status process. This visa is called a K-3 visa. The unmarried children of the alien spouse can apply for a K-4 visa.

To apply, the U.S. citizen should first file an I-130 for the alien spouse, and a separate I-130 for each of the children of the alien spouse as well (unless the children are over the age of 18). The U.S. citizen must state in answer to question 22 of the I-130 that he or she plans to obtain a K-3 and/or K-4 visa abroad, and either adjust status in the United States or return to the foreign country for consular processing. The U.S. citizen then files an I-129F along with proof that he or she mailed the I-130, or a receipt from USCIS for the I-130.

The process is then similar to the application for a K-1 visa as outlined above. Once inside the United States, the alien spouse can file an Application for Adjustment of Status, even before USCIS approves the I-130 petition. The alien spouse can also file for permission to work in the United States.

The Preference System

If the foreign relative is not an immediate relative of a U.S. citizen, he or she may still be able to apply for permanent residency through the preference system. Every year, the U.S. Congress sets aside over 400,000 visas for family members to use to immigrate to the United States under the preference system. To be eligible, the family member must be in one of five preference categories. They are:

1. Unmarried children of any age of a U.S. citizen
- 2A. Spouses and unmarried children under the age of 21 of a permanent resident
- 2B. Unmarried children age 21 or older of a permanent resident
3. Married children of any age of a U.S. citizen
4. Brothers and sisters of a U.S. citizen if the U.S. citizen is 21 or older

The available visas are divided among each foreign country, and each preference category every year. When the preference category from one country is filled, no more visas are available for immigrants in the preference category from that country that year. People who are eligible to immigrate through the preference system often wait several years for a visa to become available. It has been known for brothers and sisters of U.S. citizens to wait 20 years or longer for a visa to become available. A person who immigrates through the preference system, however, can bring his or her spouse and children to the United States as well. The spouse and children are called “derivative beneficiaries,” and will become permanent residents once they are admitted to the United States.

The Process

As explained above, the process for apply for a family-based visa has three steps. First, the U.S. citizen files a petition for the foreign relative. Once the petition is approved, the foreign relative waits for a visa to become available. When the visa is available, the foreign relative applies at the U.S. consulate in his or her country. After obtaining the visa, the foreign relative goes to a U.S. port of entry to allow a CBP official to decide whether he or she is admissible to the United States.

The Visa Petition

To start the process, the U.S. citizen or permanent resident (known as the petitioner) files a visa petition, or Form I-130, listing the foreign relative and his or her spouse and children. The petitioner must show the he or she is either a U.S. citizen or a permanent resident, and submit copies of any documents that prove this. The petitioner must also prove that he or she has the correct relationship with the alien family member, and submit copies of any documents that provide this. The petitioner mails the Visa Application, along with the appropriate fees, to the USCIS service center responsible for the petitioner’s region of the United States.

USCIS will send the petitioner written confirmation of receiving the petition. The written confirmation is important. It gives the petitioner a case file number, and a “Priority Date.” The Priority Date, which is the date of filing, will be used to determine when a visa is available for the foreign relative.

USCIS will then either approve the petition, deny the petition, or request additional evidence on a Form I-797. If USCIS requests further information, the petitioner must submit that information, or USCIS will deny the petition. It may take several months for USCIS to make a decision on a petition, or request further information.

Applying for the Visa

When USCIS approves the visa petition, this does not mean that a visa is available for the foreign relative. Rather, it means that the foreign relative will be able to apply for the visa when it

becomes available under the preference system.

The U.S. Department of State publishes a bulletin showing when visas become available. The bulletin is a chart which has columns for the countries, and rows for each preference category. To read the bulletin, first find the column for the right country. Then go down the column to the right row for the preference category. The box will list a date. All foreign relative who have a visa petition with a Priority Date on or before the date listed can apply for a visa at the U.S. Consulate in their country.

People from some countries will have to wait longer than people from other countries. Generally, people from China, Mexico, India and the Philippines wait longer for a visa than people in the same preference category from other countries. This is because more people apply for visas from China, Mexico, India and the Philippines than from other countries.

When the visa is available, the foreign relative files an application for permanent residence generally with the U.S. Consulate in their home country.

Special Issues with Marriages

As seen above, a marriage to a U.S. citizen or lawful permanent resident can serve as a basis for a visa petition. When a person applies for a visa based on a marriage, however, special issues can come up. In particular, the U.S. Government will want to be sure that the marriage is real, and not just for the purpose of a visa application. The rules in this section apply to all visa petitions involving marriage, whether the petition is a U.S. citizen or a permanent resident.

Required Documents

If a visa petition involves a marriage, there are documents that will be required in addition to the Form I-130. The first is a Form G-325A. This form is used to conduct a background check on the spouse who wants to immigrate to the United States. The background check will be performed both in the United States and other countries. The Form G-325A will ask for some of the same information that is in the I-130. It is important to be sure that the answers in the G-325A are consistent with the answers in the I-130.

In addition to the G-325A, the couple will be required to submit a color, full-frontal passport-style photograph of the spouse wishing to immigrate to the United States.

Marriage Fraud

Often, people will get married just to apply for a visa. As discussed above, the U.S. Government does not take kindly to this situation. This is called marriage fraud, and it is a crime. It can result in fines, prison time or both *for both the alien and the U.S. citizen (or permanent resident)*. It can also have severe immigration consequences. For the alien applying for the visa,

marriage fraud will cause the alien to be inadmissible to the United States. If the marriage fraud involves a permanent resident, it can result in the deportation of the permanent resident.

Proving the Marriage

USCIS will want to see that the marriage is real or *bona fide*, and not a “sham.” To show this, the married couple will need to have proof that they live as husband and wife. It is not enough just to file a copy of the marriage certificate. Instead, the couple should be ready to present other documents showing that the marriage relationship is real. For example, the couple could show bank records showing that the couple manages their finances together. The couple could show that they have children together, or that they are expecting a child. Other types of documents that the couple could be prepared to show include:

- proof that the spouse is the beneficiary of a life insurance or health insurance policy
- leases, deeds or mortgages in the names of both spouses
- utilities bills or accounts in the names of both spouses

The couple should also be ready to show photographs of the spouses together. The more documents that the couple has as proof of their marriage relationship, the better.

Marriage Interview

If a visa petition involves a marriage, USCIS may want to interview the couple to test whether the marriage is real. During this interview, USCIS may ask detailed and intimate questions about the couple’s married life. Some examples of questions USCIS may ask include:

- What side of the bed do you sleep on?
- Who wakes up first?
- What are the color of the drapes in your bedroom?
- What did you buy for your wife for her last birthday?

USCIS may conduct separate interviews of the husband and the wife and compare the answers to see if they are consistent.

Polygamy

USCIS will not permit a person to immigrate if that person will practice polygamy in the United States. For this reason, if a person files a visa petition for a spouse, and either the petitioner or the beneficiary have previous marriages, USCIS will require documentary evidence that the previous marriages ended. This can be shown either by submitting a copy of the death certificate of the previous spouse, or proof of divorce. The previous marriage must have ended before the current marriage began.

Homosexual Marriages

The U.S. Government does not recognize homosexual marriages. In order to file a petition for a spouse, the marriage must be between a man and a woman. This is regardless of whether the homosexual marriage is valid in the country or U.S. state where the marriage occurred.

Conditional Residents

If the Visa Application is based on a marriage, and the marriage is less than two years old, when USCIS approves the application it will grant the applicant “conditional residence.” This means that the applicant is a permanent resident, with all of the rights and responsibilities, for two years. Three months before the end of the two year period, the conditional resident must file an application, along with his or her spouse, to remove the conditions on the permanent residence (Form I-751). Under certain conditions the immigrant spouse may file the I-751 without his or her spouse. Those conditions are:

- if the immigrant spouse is a victim of domestic abuse,
- if the marriage ended due to no fault of the immigrant spouse, or
- if the immigrant spouse will suffer extreme hardship if deported.

If one of these conditions apply, the immigrant spouse must file for a waiver of the requirement that both spouses file the I-751. The immigrant spouse may also file the I-751 without the other spouse if the other spouse has died, and the immigrant spouse provides a certified copy of the death certificate.

If the immigrant spouse fails to file the I-751 within two years of being granted conditional residence, the immigrant spouse’s immigration status terminates automatically. The immigrant spouse may be subject to removal proceedings.

Special Issues with Adopted Children

Visa petitions involving adopted children present special issues. The rules that apply to adopted children depend on whether the child was an orphan when adopted. The term “orphan,” however, has a special definition under U.S. immigration law.

Orphans

An “orphan,” as defined by U.S. immigration law, is a child whose parents:

- died or disappeared
- abandoned or deserted the child, or
- are separated or lost from the child.

If there is only one surviving parent, the child may still be considered an orphan if the surviving parent is unable to provide care to the child, and irrevocably gives up his or her rights to the child so that the child can be adopted and leave the home country.

To qualify for immigration to the United States as an immediate relative, the orphan must be adopted by a U.S. citizen and spouse or an unmarried U.S. citizen who is at least 25 years old. The adoption can take place in the foreign country, or the orphan come to the United States to be adopted. The adopted parents must have seen the orphan personally before the adoption proceedings. Finally, the Attorney General must be satisfied that the adoptive parents can give proper care to the adopted orphan. The adoption must take place before the orphan reaches the age of 16.

If the adoptive parents do not see the child before the foreign adoption, the adoptive parents must be willing to re-adopt the child in the United States.

There is a two-part application process for U.S. citizens who adopt a foreign-born orphan. First, the prospective parent or parents must show that the child will have a proper home environment when he or she comes to the United States. This is done through a home study and a fingerprint check. The adoptive parents must also show that they comply with any adoption requirements of the state in which they live.

For the home study, all adult members of the adoptive parents' household must be interviewed in person. There must also be a home visit. The home study must assess the adoptive parents' ability to care for the adopted child, and specifically include the following:

- an evaluation of the physical, mental, and emotional capabilities of the adoptive parents and all other adult members of the household
- a detailed description of the finances of the adoptive parents
- a detailed description of the adoptive parents' living conditions
- if applicable, a detailed description of the adoptive parents' ability to provide proper care for a disabled orphan
- a description of counseling provided to the adoptive parents or plans for post-placement counseling
- the number of orphans the adoptive parents may adopt
- any restrictions on the children that should be placed with the adoptive parents

The home study must also include a background check of the adoptive parents and all adult members of the household. This background check must include an inquiry of child abuse records, substance abuse, child or sexual abuse, and domestic violence. The home study must also include a criminal history of every adult household member over the age of 18. The criminal history must disclose any juvenile arrests and any expungement of any convictions.

The adoptive parents must disclose whether they had been previously rejected for an adoption or whether there was ever an unfavorable home study concerning any adult member of the adoptive parents' household. If either situation applies, the adoptive parents must explain the circumstances.

The second part of the process looks at whether the child to be adopted is an “orphan” as defined by U.S. immigration law. If the adoptive parents know which child they are going to adopt, they can file Form I-600 with the appropriate fee. The parents can file the petition either before or after the adoption is complete.

If the parents do not know exactly which child they will adopt, they can submit a Form I-600A with the appropriate fee. After they have identified the child to be adopted, they will need to submit the Form I-600, however the fee need not be paid again.

The I-600 should be filed before the child’s 18th birthday.

Under the Child Citizenship Act, if a U.S. citizen adopts an orphan, has legal and physical custody of the orphan, and that orphan is lawfully admitted to the United States as a permanent resident, the child automatically becomes a U.S. citizen when admitted to the United States. The parents can get proof of citizenship by filing Form N-600 with the appropriate fee.

Non-Orphans

An adopted child, who is not an “orphan” may still qualify as a “child” for the purpose of U.S. immigration law if certain conditions are met. First, the adoption must take place before the child’s 16th birthday. Second, the adopted child must be in the legal custody of the adopted parents, and living with them, for 2 years.

USCIS will not issue a temporary visa for an adopted child who is not an orphan to reside in the United States for 2 years in order to meet the legal requirements. This means that at least one of the adoptive parents will have to live abroad with the adopted child for 2 years before filing the visa petition. For practical purposes, this means that a permanent resident will not be able to adopt a foreign-born child and bring the child into the United States. This is because if a permanent resident leaves the United States for more than 1 year, USCIS will conclude that the permanent resident has abandoned his or her residency in the United States.

Permanent residents may think that they can adopt a foreign-born niece or nephew in order to bring that child into the United States. U.S. immigration law, however, prevents this as a possibility. The adopted child would have to live with the permanent resident overseas for 2 years. This would mean that the permanent resident has abandoned U.S. residency, thus losing his or her immigration status.

The adoptive parents of a foreign-born non-orphan follow the same procedures to apply for a visa as they would generally for any child other than an adopted orphan.

As with adopted orphans, the Child Citizenship Act provides that if an adopted child of a U.S. citizen is admitted to the United States as a permanent resident, and the U.S. citizen has legal

and physical custody of the child, the child automatically becomes a U.S. citizen.

Talking to Your Lawyer or Other Legal Professional

As you can see, U.S. immigration law and the process to apply for a visa can be complicated. For this reason, if you wish to petition for a family member to come to the United States, it is a good idea to talk to a lawyer or other legal professional who is knowledgeable of immigration law. In certain instances, the U.S. Government will permit paralegals working for a non-profit organization and under the supervision of a lawyer to practice immigration law. Choosing the right legal professional is important to make sure that the application process runs smoothly.

About the Author

William J. Kovatch, Jr. worked as a staff attorney with the U.S. Government for almost eight years, concentrating on international law related issues. Bill has litigated complex cases before U.S. courts, NAFTA panels, and the World Trade Organization. Prior to his government work, Bill served as a judicial clerk with the District of Columbia Court of Appeals.

Bill earned his law degree from Temple University in 1998, and then his Master of Law degree, with a concentration in Transnational Law, in 2000. He holds a Master of Arts degree in Comparative Politics from the American University, and a Bachelor's degree from the University of Miami.

