U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

November 6, 2012 **PM-602-0070.1**

Policy Memorandum

SUBJECT: Guidance for Determining if an Adoption is Valid for Immigration and Nationality Act (INA) Purposes

Purpose
This policy memorandum (PM) amends the Adjudicator's Field Manual (AFM) to provide guidance on whether an "adoption" is valid for immigration purposes.

Scope
Unless specifically exempted herein, this PM applies to and is binding on all U.S. Citizenship and Immigration Services (USCIS) employees.

Authority
INA sections 101(b)(1)(E), (F), and (G)

Background
The INA has three distinct ways an adopted child may be considered, for immigration purposes, to be the child of his or her adoptive parent(s):

- INA section 101(b)(1)(E), which applies to adopted children if certain requirements are met, including where the parent or parents have two years of legal custody and joint residence;
- INA section 101(b)(1)(F), which applies to children coming to the United States as "orphans" from countries that have not ratified the Hague Adoption Convention, if they have been adopted, or are coming to the United States to be adopted, by U.S. citizen(s); and
- INA section 101(b)(1)(G), which applies to children coming to the United States who have been adopted, or are coming to the United States to be adopted, by U.S. citizen(s) under the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention), signed at The Hague on May 29, 1993.

The adopted child of a U.S. citizen(s) may qualify for naturalization under INA section 320 or section 322, if the child meets the requirements under INA sections 101(b)(1)(E), (F), or (G).

Also, the adopted child who meets the requirements of INA section 101(b)(1)(E) may qualify as the adoptive parent's child for purposes of "accompanying or following to join" the parent,

whether as a preference immigrant, refugee, or asylee. See INA sections 203(d), 207(c)(2)(A) and 208(b)(3)(A).

The INA does not define "adoption." Consistent with the decisions of the Board of Immigration Appeals an "adoption" can be the basis for immigrant benefits only if it:

1. Terminates the legal parent-child relationship between the child and any prior parent(s); and
2. Creates a permanent legal parent-child relationship between the child and the adopter.

Policy

For immigration purposes under the INA, an adoption must satisfy these three essential elements: the order must:

1. Be valid under the law of the country or place granting the adoption; *and*
2. Create a legal permanent parent-child relationship between a child and someone who is not already the child's legal parent; *and*
3. Terminate the legal parent-child relationship with the prior legal parent(s).

These requirements apply to every benefit request based on an "adopted child" relationship under INA section 101(b)(1)(E), including, but not limited to:

- Form I-130;
- Form I-730;
- Form N-600;
- Form N-600K; or
- A claim to eligibility for an immigrant or nonimmigrant visa or classification as a derivative under INA section 203(d).

These requirements also apply in orphan cases under INA section 101(b)(1)(F) as well as Hague Adoption Convention cases under INA section 101(b)(1)(G), if the child has already been adopted abroad.

A child "coming to the United States for adoption," also may qualify as an orphan or as a Hague Convention adoptee. For this reason, an adoption that does not satisfy the three essential elements noted above may nonetheless establish that the prospective adoptive parents have legal custody to bring the child to the United States for adoption under INA section 101(b)(1)(F) or INA section 101(b)(1)(G).

This guidance applies to both domestic and intercountry adoptions of non-U.S. citizen children, as well as all adoption-related immigration benefits.

Implementation
USCIS officers will determine the validity of adoptions according to this PM, including the guidance in the AFM amendments adopted through this PM.

Accordingly, the Chapters 21.4, 21.5, 21.6, 21.10, and 71.1; of the AFM (Update AD12-10) are revised as follows:

☞ 1. Chapter 21.4(d)(5)of the AFM is revised:

a. In chapter 21.4(d)(5)(B), by adding one sentence to the end of the first paragraph; and
b. In chapter 21.5(d)(5)(F) by adding a seventh paragraph at the end of the second Note.

The revisions read as follows:

21.4 Petition by Citizen or Lawful Permanent Resident for a Child, Son or Daughter.

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(d) Adjudicative Issues Pertaining to Relationship Between Petitioner and Beneficiary.

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(5) Child Adopted While Under the Age of 16.

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(B) Relationship Through Adoption. The regulations incorporate the definitions for both legal custody and joint residence in paragraphs (vii)(A), (vii)(B), and (vii)(C) of **8 CFR 204.2(d)(2)**. You need to be aware of these regulations and their applicability. See also **Chapter 21.15** of this AFM for specific information about immigration benefits based on adoption.

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(F) Child from a Hague Adoption Convention Country.

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Note

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It is preferable for the petitioner to obtain the written statement from the Central Authority of the other Hague Adoption Convention country before obtaining an adoption order in the United States. However, the written statement, even after the fact, would serve to resolve any doubt about whether adoption court had jurisdiction to act on the adoption petition at the time when the court first did so. For this reason, USCIS will also accept an amended adoption order, if the amended adoption order reflects the Central Authority's written statement. This amended order will be, sufficient to establish that the child was no longer habitually resident in the other Convention country at the time of the adoption. The written statement must be included with the amended order.

☞ 2. Chapter 21.5(d)(5)(A)(ii) of the AFM is revised to read as follows:

21.5 Petition for an Orphan.

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(d) Adjudication of Form I-600.

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(5) Evidence That the Child Has Been Adopted Abroad or Is Coming to the United States to Be Adopted.

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(A) If the Child Was Adopted Abroad.

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(ii) See **Chapter 21.15** of this AFM for information on what qualifies as an "adoption" for immigration purposes. As noted in that chapter, guardianships, "simple adoptions," or Kafala adoptions in countries that follow traditional Islamic law might not qualify. But because an "orphan" can be brought to the United States for adoption, instead of being adopted abroad, a guardianship, Kafala order, or other custody order might establish that the prospective adoptive parents "have…secured custody of the child," as specified in 8 CFR 204.3(d)(1)(iv)(B)(1). The document giving legal custody must be valid under the law of the country in which it was obtained. Depending on the governing law, the custody document may be either a court order or an administrative act. Provided the legal custody is for emigration and adoption, in accordance with the laws of the foreign-sending country, and all other requirements are met, the evidence could support approval of the Form I-600 as an IR-4, rather than an IR-3.

☞ 3. Chapter 21.6(a) of the AFM is revised by adding after the second paragraph the following new paragraph:

21.6 Petition for a Hague Convention Adoptee

(a) Application of the Hague Convention.

On November 16, 2007, * * *

The Hague Adoption Convention . . .

See **Chapter 21.15** of this AFM, for information on what qualifies as an "adoption" for immigration purposes. As noted in that chapter, guardianships, "simple adoptions," or Kafala adoptions in countries that follow traditional Islamic law might not qualify. But because a Hague Convention adoptee can be brought to the United States for adoption, instead of being adopted abroad, a guardianship, Kafala order, or other custody order might qualify as a "decree or administrative order…giving custody of the child," 8 CFR 204.313(h)(1)(ii)(A). The document giving legal custody must be valid under the law of the country in which it was obtained. Depending on the governing law, the custody document may be either a court order or an administrative act. Provided the legal custody is for purposes of emigration and adoption, in accordance with the laws of the foreign-sending country, and all other requirements are met, the evidence could support approval of the Form I-800 as an IH-4, rather than an IH-3 case.

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☞ 4. Chapter 21.10(d) of the AFM is revised by:

a. Revising the "Note" under the bullet captioned "Time at Which Relationship was Created"; and
b. Adding a new bullet at the end.

The revisions read as follows:

21.10 Refugee / Asylee Relative Petitions.

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(d) General Adjudication Issues.

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Note
A child might qualify as the child of the principal refugee or asylee even if the petitioner is not the birth father or birth mother *as a matter of fact*. For example, the petitioner may have been married to the child's mother when the child was born, but may also have been in the United States continuously since prior to the earliest possible date of the child's conception. First, the law of the place of birth of the child may conclusively establish that the mother's husband is the *legal* birth father. Second, even if the law does not establish a legal parental relationship, when a child is born as the legal child of only one partner of a married couple, the child is considered the "step-child" of the other partner for immigration purposes. See ***Matter of Stultz***, 15 I&N Dec. 362 (AG 1975). Because the child qualifies as the petitioner's "step-child" under INA section 101(b)(1)(B), you do not need to decide if the child is the petitioner's child under INA section 101(b)(1)(A), (C), or (D).

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- For Adopted Child(ren)- Effects of the Adoption – An adopted child, as defined in INA section 101(b)(1)(E), can be the beneficiary of a Form I-730. See **Chapter 21.15** of this AFM for information on what qualifies as an "adoption" for immigration purposes.

☞ 5. Chapter 21.15 of the AFM is added to read as follows.

21.15 Adoption as a basis for immigration benefits

(a) General. If the requirements of INA section 101(b)(1)(E) have been met, a person adopted while under the age of 16 (or, in certain cases, under the age of 18) is the child, adult son or adult daughter of the adopting parent(s) – not the birth parent(s) – for immigration purposes. Similarly, the adopted person is the sibling of the adoptive parent's other legal children, but not of the birth parent's children. See ***Matter of Li***, 20 I&N Dec. 700 (BIA 1993). The adoptive parent-child relationship is valid for all relevant immigration benefit requests under the INA, including, but not limited to:

- Form I-130 (whether filed for a child, adult son or daughter, or sibling);
- Form I-730;
- Form N-600;
- Form N-600K; or
- A claim to eligibility for an immigrant visa as a derivative under INA section 203(d).

The validity of an adoption is relevant to adjudication of both the Form I-600 (orphan petition) and the Form I-800 (Hague Adoption Convention petition). Although both orphans and Hague Convention adoptees often come to the United States after they are adopted overseas, both INA sections 101(b)(1)(F) and (G) allow children to come to the United States before they are actually adopted. **Chapters 21.5** and **21.6** of this AFM

state that an adoption that does not actually qualify as an adoption for immigration purposes may nonetheless establish guardianship for emigration and adoption under the laws of the sending country. Such a guardianship may support approval of a Form I-600 or Form I-800 for a child coming to the United States to be adopted, provided all other requirements are met.

(b) Validity and essential legal elements of an adoption. Though the INA does not define "adopted" or "adoption," BIA precedent establishes that an adoption must create "a legal status comparable to that of a natural legitimate child" between the adopted and the adopter. ***Matter of Mozeb,*** 15 I&N Dec. 430 (BIA 1975). Thus, it does not matter what name anyone gives to a claimed adoption. For immigration purposes, what matters is whether or not the order that is claimed to be an adoption meets these essential legal elements:

- It is valid under the law of the country or place granting the order; *and*
- It creates a legal permanent parent-child relationship between a child and someone who is not already the child's legal parent; *and*
- It terminates the legal parent-child relationship with the prior legal parent(s).

Note, however, that the law in some jurisdictions allows a step-parent to adopt the children of his or her spouse, if the legal parent-child relationship with the other legal/biological parent has been terminated by death or legal action. In this situation, it is enough to meet the third essential element of "adoption" for the parent-child relationship to be terminated as to the prior parent who is not the spouse of the adopting step-parent. The continuing legal parent-child relationship between the child and the adopting step-parent's spouse does not preclude recognition of the adoption. The legal custody and joint residence requirements of INA section 101(b)(1)(E), however, must be met by the adoptive step-parent before the individual can be considered the adopting step-parent's child under section 101(b)(1)(E).

A step-parent does not actually need to adopt his or her step-child in order for a Form I-130 or Form I-730 to be approved. If the parent and step-parent married before the child's 18th birthday, the step-parent/step-child relationship can be a basis for approving a Form I-130 or a Form I-730. *See* INA section 101(b)(1)(B). An adoption that meets the age, custody and residence requirements of INA section 101(b)(1)(E) would be needed, however, before the individual could be the adopting step-parent's "child" for purposes of naturalization under INA section 320 or INA section 322.

The mere fact of ongoing contact with the birth parents (as in "open adoptions") does not mean that the legal parent-child relationship with the prior legal parent(s) was not terminated. The adoptive parents, rather than the prior parents, must be exercising full parental authority over the child as a result of the adoption.

(c) Determining the validity and effect of a foreign "adoption." The law of the country of adoption determines the validity of the adoption. *See* ***Matter of T-***, 6 I&N Dec. 634

(1955). Generally speaking, you should accept the adoption decree at face value. The validity of the adoption under the relevant law does not establish, however, that the child was adopted "while under the age of sixteen" (or 18, as appropriate) for purposes of INA section 101(b)(1)(E). To meet the age requirement, the court or administrative body must have actually granted the adoption before the adoptee's 16th (or 18th) birthday. *See* *Matter of Cariaga*,15 I&N Dec. 716 (BIA 1976); *cf.* *Mathews v. USCIS,* 2012 WL 555665 (11th Cir. 2012). District court decisions refusing to defer to *Matter of Cariaga* are not binding precedents. *Matter of K- S-,* 20 I&N Dec. 715 (BIA 1992). USCIS adjudicators are legally obligated to follow *Matter of Cariaga*. 8 CFR 1003.1(g).

You may properly question the validity of the adoption; moreover, if there is credible and probative evidence that:

- The adoption was flawed in its execution, such as when the court (or other official body) granting the adoption appears to have lacked jurisdiction over the adoption, or when the prior parents did not consent to the adoption or were not given proper notice of the termination of parental rights; or

- The adoption was granted due to official corruption or the use of fraud or material misrepresentation.

Not recognizing an adoption in one of these situations may be consistent with legal principles generally observed by courts in the United States with respect to foreign country judgments. *See* Restatement (Third) Foreign Relations Law of the United States sections 482(2)(a), (b) and (c). If there is credible and probative evidence that the adoption may be invalid for one of these reasons, the burden will fall on the petitioner to establish that the adoption is still valid under the foreign law.

You must consult closely with USCIS counsel, through appropriate channels, before deciding not to recognize a foreign adoption that appears on its face to be valid.

(1) Adoption as judicial or administrative act. One issue clearly governed by foreign law is what official act constitutes an adoption in another country. In many countries, as in the United States, adoption is a judicial process. Thus, the evidence of the adoption is a court order. In other countries, adoption is an administrative, not a judicial, process. For example, in South Korea, adoption is accomplished by adding the adopted child to one's Family Registry. See ***Matter of Cho,*** 16 I&N Dec. 188 (BIA 1977). In 2003, Cambodia informed other countries through a diplomatic note that Cambodian courts do not have jurisdiction to grant adoption to non-Cambodians. Cambodian adoptions are completed through an administrative process. Finally, as noted in **paragraph (c)(4)** of this chapter, in some countries, a legal adoption can be accomplished according to legal custom, without a court or administrative order.

(2) Whether adoption actually exists in a given country. Another issue governed by the foreign law is whether or not a legal parent-child relationship can be created by adoption.

(A) In countries that follow traditional Islamic law, "adoption" in the sense required for immigration purposes does not exist. *See, Matter of Mozeb, supra*; and ***Matter of Ashree, Ahmed and Ahmed***, 14 I&N Dec. 305 (BIA 1973). Therefore, a *Kafala* order issued by a country *that follows traditional Islamic* law will not qualify as an adoption.

(B) In some multi-ethnic or multi-religious countries, the personal status laws for each ethnic or religious group governs adoptions. In such countries, different bodies of law govern adoption for different children, even within the same neighborhood. An adoption valid for immigration purposes may not be available for a Muslim child under Islamic family law, but may be available for the child next door under Jewish or Christian family law.

(C) India is an example of a country with complex multiple adoption laws. Traditionally, under the 1956 Hindu Adoption and Maintenance Act, adoption by adoption deed is available in India (other than in the state of Jammu and Kashmir) only to Hindus, Buddhists, Jains, and Sikhs, and others subject to Hindu family law or custom. For others, the 1890 Guardians and Wards Act apply (other than in Jammu and Kashmir). But the Guardians and Wards Act does not provide for adoption for those not subject to Hindu family law or custom, only guardianship. Thus, a court order under the Guardians and Wards Act is not valid as an adoption for immigration purposes. Effective August 22, 2006, however, India amended the Juvenile Justice Act of 2000. Adoptions under the Juvenile Justice Act permanently separate children from their prior parents and make them the "legitimate child" of the adoptive parents. Courts in India now have authority to grant adoption for any child who has been "abandoned" "orphaned" or "surrendered". The Juvenile Justice Act is now effective throughout India, except for Jammu and Kashmir. In light of these amendments, if a court in India (other than a court in Jammu and Kashmir), on or after August 22, 2006, grants an adoption *under the Juvenile Justice Act*, USCIS accepts the adoption as valid, regardless of the religion of the adoptive parents or of the child.

Note that to be valid for immigration purposes, the adoption must be:
- ✓ For children found to be abandoned, orphaned, or surrendered;
- ✓ Made by a court acting under the Juvenile Justice Act, as amended;
- ✓ After August 22 2006; and
- ✓ Not in the state of Jammu and Kashmir.

The amended Juvenile Justice Act did not repeal either the Hindu Adoption and Maintenance Act or the Guardians and Wards Act. Adoption by adoption deed under the Hindu Adoption and Maintenance Act is still limited to individuals governed by Hindu law or custom. An order under the Guardians and Wards Act is still guardianship, not adoption.

Also, the 1956 Hindu Adoption and Maintenance Act, the 1890 Guardians and Wards Act, and the Juvenile Justice Act are not in force in the State of Jammu and Kashmir. Jammu and Kashmir has its own family laws. As noted in chapter 21.5(e), a person seeking a benefit based on an adoption in Jammu and Kashmir must show that it is valid for immigration purposes.

(3) Simple adoption. Some countries have a type of adoption commonly called "simple adoption," in addition to another type that may be called "full" or "plenary" or "perfect" adoption. Whether "simple adoption" is valid for immigration purposes depends on the foreign law. For example, in ***Matter of Kong***, 15 I&N Dec. 224 (BIA 1975), and 14 I&N Dec. 649 (BIA 1974) and ***Matter of Chang***, 14 I&N Dec. 720 (BIA 1974) the BIA held that "Appatitha," a form of simple adoption in Burma, did not create a *legal* parent/child relationship. However, if a simple adoption does create a permanent legal parent/child relationship, it might be valid for immigration purposes (if it otherwise satisfies the three essential elements noted in chapter 21.15(b)). ***Matter of Chin***, 12 I&N Dec. 240 (BIA 1967).

The French Civil Code is one example of simple adoption. It states that simple adoption gives the adoptive parent "all the rights of parental authority." Thus, although the child may still have some inheritance rights through the family of origin, the child is, legally, the child of the adoptive parents not the birth parents. Similarly, in Guinea (Conakry), simple adoption gives the adoptive parent(s) all parental authority over the child. Guinea (Conakry) *Code L'Enfant,* art. 123.

Even if a "simple adoption" might be more easily terminated than a "full" adoption, that alone does not mean the simple adoption does not create a "permanent" relationship. For example, article 359 of the French Civil Code says plenary adoption is "irrevocable," while article 370 allows for revocation of simple adoption. But simple adoption can only be revoked "[w]here serious reasons so justify." Even the legal parent-child relationship created by birth can be terminated for serious reasons. Moreover, the adoptive parent cannot seek revocation of simple adoption unless the adoptee is over 15 years old. Similarly, in Guinea (Conakry), simple adoption can only be terminated for "grave reasons," and the parent cannot request termination while the child is under 13 years old. Guinea (Conakry) *Code L'Enfant,* art. 129. These are examples of simple adoptions that can be deemed "permanent," since they cannot be terminated by the adoptive parent while the child is still very young, or simply at the adoptive parent's request.

To summarize, a USCIS adjudicator can find that a "simple adoption" is valid for immigration purposes if the simple adoption meets the three essential elements noted in **Chapter 21.15(b)**:

- ✓ It creates a legal permanent parent-child relationship between a child and someone who is not already the child's legal parent; *and*
  - The parent-child relationship cannot be terminated for other than "serious" or "grave" reasons; *and*
- ✓ It terminates the legal parent-child relationship with the prior legal parent; *and*
- ✓ It does the above, under the law of the country (or political subdivision) granting the simple adoption.

(4) Customary adoption. As noted, the law of the place of adoption governs the validity of an adoption. In some countries, "customary" adoption may exist instead of, or in addition to, adoption through a judicial or administrative procedure. If a customary adoption terminates the legal parent-child relationship with the prior parents, and creates a legal parent-child relationship with the adoptive parent under local law, then that customary adoption is valid for immigration purposes. See ***Matter of Lee***, 16 I&N Dec. 511 (BIA 1978). As with any other case involving questions of foreign law, the petitioner must show that the foreign law actually creates a valid adoption for immigration purposes. See **Matter of Annang**, 14 I&N Dec. 502 (BIA 1973). As the Board has recognized with respect to customary divorce, see **Matter of Kodwo**, 24 I&N Dec. 479 (BIA 2008), the petitioner would need to establish that the customary adoption:

- ✓ Creates a legal permanent parent-child relationship between a child and someone who is not already the child's legal parent; *and*
- ✓ Terminates the legal parent-child relationship with the prior legal parent; *and*
- ✓ Complies with the requirements of the relevant customary law and is legally recognized in the country or place the adoption occurs.

(5) Hague Adoption Convention adoptions not involving the United States. Many countries other than the United States are parties to the Hague Adoption Convention. An adjudicator may encounter a request for an immigration benefit in which it is claimed that an individual habitually resident in one Hague Adoption Convention country, other than the United States, adopted a child habitually resident in another Hague Adoption Convention country, other than the United States. If properly certified as specified in Article 23 of the Hague Adoption Convention, the claimed adoption would be entitled to recognition by the United States.

But whether this adoption would form the basis for immigration benefits under United States law is determined solely as provided for in the immigration laws of the United States. Thus, for purposes of a Form I-130, I-730, N-600, N-600K, or an "accompanying for following to join" claim, the adoption would support approval only

if the adoption met the age, custody and residence requirements of INA section 101(b)(1)(E).

Similarly, a Form I-800 could be approved only if the Secretary of State certified under INA section 204(d)(2) that the adoption complied with the Hague Adoption Convention.

(d) Effect of legal termination of an adoption. As with the adoption itself, local foreign law governs the validity of a termination of an adoption. However, even if a termination is legally valid, it will not adversely impact any immigration benefits already granted while an adoption was in effect. See ***Matter of Xiu Hong Li***, 21 I&N Dec. 13 (BIA 1995). Moreover, termination of an adoption does not *necessarily* mean that the legal parent-child relationship has actually been restored with the birth parent(s). As the Board noted in *Xiu Hong Li*, "We do not assume that natural relationships are automatically reestablished solely by virtue of the fact that an adoption has been lawfully terminated." See *Matter of Xiu Hong Li* at 18. Therefore, even if no immigration benefits flowed from the adoption, the evidence must show that the legal relationship to the prior parent(s) is re-established according to law in order for that relationship to form the basis for granting a benefit under the INA.

(e) Getting evidence about the foreign adoption law. In proceedings under the INA, foreign law is a question of fact to be proved by evidence. See ***Matter of Annang***, 14 I&N Dec. 502 (BIA 1973). If the evidence of record does not clearly show that an adoption creates a permanent legal parent-child relationship, the USCIS officer will issue a request for evidence (RFE) asking for a copy of the relevant laws, with properly certified English translations. The officer can also request information, or a formal opinion, about the foreign law, from the Library of Congress, through appropriate channels.

Information about the Library of Congress is on **USCIS Connect**. Work within your office's local policy and guidelines to request an opinion from the Library of Congress.

The Department of State has information on adoptions and country-specific information on their **adoptions** webpage and their **visa reciprocity tables**. An adjudicator can also request assistance, through appropriate USCIS and National Visa Center channels, and from U.S. consular posts or USCIS field offices abroad.

Another resource for information is the **CIA World Factbook**.

Before denying a petition or application based on information about the other country's adoption law that the petitioner or applicant may not be aware of, the officer will provide the petitioner or applicant with notice and an opportunity to respond, as specified in 8 CFR 103.2(b)(16).

☞ 6. Chapter 71.1(d)(3)(A) of the AFM is revised to read as follows:

Chapter 71 Citizenship.

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(d) "Derivation" of U.S. Citizenship.

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(3) Other Persons Eligible for Certificates of Citizenship. **(Revised 8/15/2008; AD08-14)**

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(A) Persons Eligible to File the Application for Citizenship under **INA section 322**.

(i) General. The United States citizen parent with legal and physical custody of a birth or adopted child files the Form N-600K on behalf of the child. The child must be under 18 years old. Note that while a step-child may qualify as the step-parent's "child" for purposes of immigration (or adjustment of status), a step-child does not qualify for naturalization under **INA section 322**. See **INA section 101(c)**; **8 CFR 322**; **Appendix 71-7** and **Chapter 71.1(b)** of this AFM (Definition of Child for Naturalization and Citizenship). A child who immigrated as the step-child of a citizen can acquire citizenship under INA section 322 only if

- The step-parent adopts the child; and
- The adoption meets the age, custody and residence requirements of INA section 101(b)(1)(E); and
- The child meets the requirements under INA section 322 when the application for citizenship under INA section 322 is adjudicated.

See **Chapter 71.1(d)(3)(A)(2)** of this AFM for information about the eligibility of adopted children.

As of November 2, 2002, a U.S. citizen grandparent or U.S. citizen legal guardian is eligible to apply for naturalization on behalf of a child under INA section 322 (amended by **Pub. L. 107-273**). If a U.S. citizen parent of a child who otherwise meets the eligibility requirements of INA section 322 has died, a U.S. citizen parent of the parent (that is, a grandparent) or a U.S. citizen legal guardian of the child may file the application for citizenship at any time within five years of the parent's death. These are the only times that

anyone other than the U.S. citizen parent can file an application for citizenship on behalf of a child under INA section 322. (See **Appendix 71-8** of this AFM.) The qualifying U.S. citizen must file Form N-600K according to the form instructions. The adjudicator should send an appointment notice to the parent and child if the application appears approvable. If the child needs a visa to enter the United States, the parent should take the appointment notice to a U.S. Consulate or the consular section of a U.S. Embassy to get a nonimmigrant visa for the child. See **Chapter 71.1(f)** (Adjudicating the Application). For a child of a member of the Armed Forces, see paragraph below ("Exceptions for a Child of a Member of the Armed Forces").
(ii) Adopted children. INA section 322 applies to an adopted child, if the child meets the requirements of INA sections 101(b)(1)(E), (F) or (G). See **Chapter 21.15** of this AFM for information about how adoption relates to immigration benefits.

A child adopted while under the age of sixteen (or 18, as specified in INA section 101(b)(1)(E)(ii)) qualifies as the child of the adoptive parent if the adoptive parent has had legal custody of the child, and has resided with the child, for at least two years. See **INA section 101(b)(1)(E)(i)**.

A child who is an orphan and adopted, as defined in **INA section 101(b)(1)(F)**, must give evidence either of an approved Form I-600, Petition to Classify Orphan as an Immediate Relative, or of admission as an IR-3 or IR-4. If the child was admitted with a IR-4 visa, the prospective adoptive parents must adopt (or re-adopt) the child in the United States before the child's 18th birthday in order for INA section 322 to apply. The two year custody and residence requirements of INA section 101(b)(1)(E) do *not* apply to orphan cases.

A Hague Convention child, as defined in **INA section 101(b)(1)(G)**, must give evidence either of an approved Form I-800, Petition to Classify Convention Adoptee as an Immediate Relative, or of admission as an IH-3 or IH-4. If the child was admitted with an IH-4 visa, the prospective adoptive parents must adopt the child in the United States before the child's 18th birthday in order for INA section 322 to apply. The two year custody and residence requirements of INA section 101(b)(1)(E) do *not* apply to Convention adoption cases.

☞ 7. The AFM **Transmittal Memorandum** button is revised by adding a new entry, in numerical order, to read:

AD12-10 11/6/2012	**Chapters 21.4**, **Chapter 21.5**, **Chapter 21.6**, **Chapter 21.10**, **Chapter 21.15**, and **Chapter 71.1**	This PM adds new Chapter 21.15 and revises Chapters 21.4, 21.5, 21.6, 21.10 and 71.1 to provide guidance concern adoption as a basis for immigration and naturalization benefits.

Use

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

Questions regarding the guidance contained in this memorandum should be forwarded to the Field Operations Directorate; Refugee, Asylum and International Operations Directorate; or Service Center Operations Directorate, through appropriate channels.