

## **9 FAM 42.21 IMMEDIATE RELATIVES**

*(CT:VISA-1716; 09-29-2011)  
(Office of Origin: CA/VO/L/R)*

### **9 FAM 42.21 RELATED STATUTORY PROVISIONS**

*(CT:VISA-1716; 09-29-2011)*

See INA 101(b)(1)(E) and (F) (8 U.S.C. 1101(b)(1)(E) and (F)), INA 101(c)(1) (8 U.S.C. 1101(c)(1)), INA 201(b)(2)(A), (8 U.S.C. 1151(b)(2)(A)), INA 204 (8 U.S.C. 1154), Section 216(a), Public Law 107-56, and Section 423.

INA 101(b)(1)(E) and (F)

b. As used in subchapters I and II of this chapter —

(1) The term “child” means an unmarried person under twenty-one years of age who is —

- (E) (i) A child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years or if the child has been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household: Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or
- (ii) Subject to the same proviso as in clause (i), a child who:
  - (I) Is a natural sibling of a child described in clause (i) or subparagraph (F)(i);
  - (II) Was adopted by the adoptive parent or parents of the sibling described in such clause or subparagraph; and
  - (III) Is otherwise described in clause (i), except that the child was adopted while under the age of 18 years; or

- (F) (i) A child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 1151 (b) of this title, who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence; Provided, That the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States: Provided further, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or
- (ii) Subject to the same provisos as in clause (i), a child who:
- (I) Is a natural sibling of a child described in clause (i) or subparagraph (E)(i);
- (II) Has been adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in such clause or subparagraph; and
- (III) Is otherwise described in clause (i), except that the child is under the age of 18 at the time a petition is filed in his or her behalf to accord a classification as an immediate relative under section 1151 (b) of this title.

INA 201(b)(2)(A)

b. Aliens Not Subject to Direct Numerical Limitations. - Aliens described in this subsection, who are not subject to the worldwide levels or numerical limitations of subsection (a), are as follows:

- (2)(A)(i) Immediate relatives. - For purposes of this subsection, the term "immediate relatives" means the children, spouses, and parents of a citizen of the United States, except that,

in the case of parents, such citizens shall be at least 21 years of age. In the case of an alien who was the spouse of a citizen of the United States and was not legally separated from the citizen at the time of the citizen's death, the alien (and each child of the alien) shall be considered, for purposes of this subsection, to remain an immediate relative after the date of the citizen's death but only if the spouse files a petition under section 204(a)(1)(A)(ii) within 2 years after such date and only until the date the spouse remarries. 3/ For purposes of this clause, an alien who has filed a petition under clause (iii) or (iv) of section 204(a)(1)(A) of this Act remains an immediate relative in the event that the United States citizen spouse or parent loses United States citizenship on account of the abuse.

- (ii) Aliens admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative.
- (B) Aliens born to an alien lawfully admitted for permanent residence during a temporary visit abroad.

## **9 FAM 42.21 RELATED STATUTORY PROVISIONS**

*(CT:VISA-960; 05-22-2008)*

See 22 CFR 42.21.