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9 FAM 102.8
FAMILY-BASED RELATIONSHIPS

(CT:VISA-1272; 05-03-2021)
(Office of origin: CA/VO)

9 FAM 102.8-1 MARITAL RELATIONSHIP

9 FAM 102.8-1(A) What Qualifies as a Marriage?

(CT:VISA-1272; 05-03-2021)

The term "marriage" is not specifically defined in the INA; however, the meaning of "marriage" can be inferred from INA 101(a)(35), which defines the term "spouse." Relationships entered for purposes of evading immigration laws of the United States are not valid for visa adjudication purposes.

9 FAM 102.8-1(B) Validity of Marriage

(CT:VISA-1272; 05-03-2021)

a. **Law of Place of Celebration Controls:** The underlying principle in determining the validity of the marriage is that the law of the place of marriage celebration controls (except as otherwise noted below). If the marriage was properly and legally performed in the place of celebration and legally recognized, then the marriage is deemed to be valid for visa adjudication purposes. Any prior marriage, of either party, must be legally terminated before the later marriage.

b. **Void for Public Policy:** Certain marriages that are legal in the place of celebration but are void under state law as contrary to public policy, are not valid for visa adjudication purposes.

(1) **Polygamous Marriages:** Polygamous marriages are not recognized as a matter of federal public policy. See Matter of H-, 9 I&N Dec. 640 (BIA 1962). Any prior marriage, of either party, must be legally terminated before the later marriage.

(2) **Marriage Between Relatives:** Certain marriages between relatives may be void because of public policy concerns even if the place of celebration recognizes the marriage.

(a) A marriage void under state law, such as a relative marriage, may nevertheless be recognized as valid by the state of intended immigration.

(b) The legal thresholds vary state by state. For example, first cousins may not marry in Michigan and such marriages in Michigan are considered void from their inception (M.C.L.A. 551.3 (2010)). A 1973 ruling of the Michigan Supreme Court, however, found a marriage between first cousins that took place in Hungary was nevertheless valid in Michigan. See Toth v. Toth, 50 Mich. App 150, 212 N.W.2d 812 (1973).

(c) In any case where you suspect that a marriage may not be valid for visa adjudication purposes because the parties are biological relations such as siblings, uncle-niece, or first cousins you may request an advisory opinion (AO) from the Office of the Legal Adviser for Consular Affairs (L/CA).

(3) **Minor Marriage:** Certain underage marriages involving an individual under the age of 18 may be void because of public policy concerns even if the place of celebration recognizes the marriage as valid.

(a) Legal thresholds for underage marriage vary state by state. Some states may recognize a marriage performed in another jurisdiction even if state law would not allow the parties to enter a marriage in that state, while other states would not recognize such a marriage because it violates the public policy of the state. In any case where you suspect that a marriage may not be valid in the state where the applicant intends to reside because one or both of the parties are underage or were potentially underage at the time of marriage, you should request an AO from L/CA.

(b) Legal thresholds for sexual consent also vary state by state. If you find that the applicant intends to reside in a state where the marital relationship will likely result in the commission of unlawful activity (i.e., statutory rape where there is no exception for marriage), you should request an AO from L/CA to determine if the visa should be refused under INA 212(a)(3)(A)(ii) based on intent to engage in unlawful activity.

(c) In the context of immigrant visa processing, a minor can successfully petition for a spouse. However, family-based immigrant visas require that the petitioner submit an I-864, Affidavit of Support. INA 213A(f)(1)(B) requires that a petitioner must be at least 18 years of age to qualify as a "sponsor" on an I-864. In any case involving a spousal petitioner who is under the age of 18, you should refuse the visa application under INA 212(a)(4)(A) as a public charge as the petitioner cannot properly submit the required I-864. While a joint sponsor may be used in cases in which the petitioner does not meet the income requirement found at INA 213(f)(1)(E), the age requirement cannot be overcome with a joint sponsor. If the petitioner later reaches age 18 and meets all other requirements, the ineligibility can be overcome. If the petitioner will turn 18 within a year after the initial adjudication, then no additional fee or

application is required. If the petitioner will turn 18 more than a year after the initial adjudication, then a new fee and visa application would be required. See 9 FAM 504.11-4 and 9 FAM 601.14.

(d) If the petitioner or beneficiary indicates to you that s/he is being forced to marry against his/her will, you should reach out to the VO/F post liaison for guidance. The Visa Office works closely with USCIS on cases involving allegations of forced marriage and can provide case-by-case guidance to post while working to protect the confidentiality of the party that disclosed the forced marriage. In instances where you believe the underage applicant is being married against his/her will, you should conduct a more in-depth interview with the applicant, preferably in a privacy window. You should obtain a statement from the applicant detailing the circumstances of the marriage and his/her intention and willingness to enter the marriage. Regardless of the desires of the applicant, if you suspect forced marriage you should send an AO to L/CA for confirmation of the legality of the marriage and potential return of the petition to USCIS on that basis. If a forced marriage case results in a consular return, and if the applicant or beneficiary inquires, you must only communicate that the petition has been returned to USCIS.

9 FAM 102.8-1(C) Process of Determining the Validity of Marriage

(CT:VISA-1272; 05-03-2021)

a. **Role of the** Department of Homeland Security**:** In some situations, Department of Homeland Security/United States Citizenship and Immigration Services (DHS/USCIS) will have determined the validity of a marriage in the petition approval context.

(1) Under INA 204, the USCIS has the responsibility for determining whether *a noncitizen* is entitled to immediate relative (IR) or preference status by reason of the *noncitizen's* relationship to a U.S. citizen or permanent resident. If USCIS approves a petition with the knowledge that the parties concerned are related to each other such as uncle and niece or as first cousins, you should accept such determination and not attempt to reach an independent conclusion.

(2) In cases where DHS/USCIS has approved a petition involving a marriage between relatives, and you question its validity, but do not believe it necessary to return the petition directly to DHS/USCIS pursuant to 22 CFR 42.43, you should refer any questions concerning the validity of the underlying marriage for an AO to L/CA.

b. **Role of the Consular Office:** In other cases, such as derivative nonimmigrant classifications (for example, F-2, A-2, H-4) and consular approval of a visa petition under 9 FAM 504.2, you are responsible for determining the validity of the marriage. Where you are faced with

determining the validity of a marriage between relatives for consular approval of a petition, the case must be considered "not clearly approvable" and submitted to USCIS for approval. (See 9 FAM 504.2.)

9 FAM 102.8-1(D) Proxy Marriages

(CT:VISA-1272; 05-03-2021)

A marriage where one or both parties was not present (proxy marriage) is not valid unless the marriage was consummated.

(1) **Consummated:** For the purpose of issuing a visa to a "spouse," a proxy marriage that has been subsequently consummated is deemed to have been valid as of the date of the proxy ceremony. A proxy marriage consummated prior to the proxy ceremony cannot be considered a valid marriage for visa adjudication purposes unless it has been consummated subsequently.

(2) **Unconsummated:** A proxy marriage that has not been subsequently consummated does not create or confer the status of "spouse" pursuant to INA 101(a)(35). For IV cases, a party to an unconsummated proxy marriage may be processed as a nonimmigrant fiancé(e). A proxy marriage celebrated in a jurisdiction recognizing such marriage is generally considered to be valid; thus, an actual marriage in the United States is not necessary if *the applicant* is admitted to the United States under INA provisions other than as a spouse. (See 9 FAM 502.7-3(B) for additional information on fiancé classifications.)

9 FAM 102.8-1(E) Same-Sex Marriages

(CT:VISA-1272; 05-03-2021)

Same-sex marriage is valid for visa adjudication purposes, *if* the marriage is recognized in the "place of celebration," whether entered in the United States or a foreign country. The same-sex marriage is valid even if the applicant is applying in a country in which same-sex marriage is illegal.

9 FAM 102.8-1(F) Common Law Marriage

(CT:VISA-1272; 05-03-2021)

In the absence of a marriage certificate, an official verification, or a legal brief verifying full marital rights, a common law marriage or cohabitation *is* a "valid marriage" for purposes of visa adjudication only if it is legally recognized in the place in which the relationship was created and is fully equivalent in every respect to a traditional marriage. To be "fully equivalent", the relationship must bestow all the same legal rights and duties possessed by partners in a lawfully contracted marriage, including that:

(1) The relationship can only be terminated by divorce or death;

(2) There is a potential right to alimony;

(3) There is a right to intestate distribution of an estate; and

(4) There is a right of custody if there are children.

9 FAM 102.8-1(G) Civil Unions and Domestic Partnerships

(CT:VISA-1272; 05-03-2021)

Like common law marriages, a civil union or domestic partnership only qualifies as a "valid" marriage for visa adjudication purposes if the place of celebration recognizes the status as equal in all respects to a marriage. See 9 FAM 102.8-1(F) above.

9 FAM 102.8-1(H) Transgender Marriages

(CT:VISA-367; 05-26-2017)

For visa adjudication purposes, a marriage involving transgender persons is valid if the place of celebration where the marriage took place recognizes the marriage as valid, subject to the exceptions described above (such as polygamy).

9 FAM 102.8-1(I) Legal Separations and Marriage Termination

(CT:VISA-1272; 05-03-2021)

a. An *applicant* is deemed a "spouse" for visa adjudication purposes, even though the parties to the marriage have ceased cohabiting, *if* such marriage was not contracted solely to qualify for immigration benefits. If the parties are legally separated, i.e., by written agreement recognized by a court or by court order, the *applicant* no longer qualifies as a "spouse" for visa adjudication purposes even though the couple has not obtained a final divorce.

b. If an individual's prior marriage has been terminated by a separation that is not recognized by the state in which he or she resides, the individual must first obtain a divorce from the prior spouse *to* qualify for an immigrant visa.

9 FAM 102.8-2 PARENT-CHILD RELATIONSHIPS

9 FAM 102.8-2(A) Who Qualifies as a Child?

(CT:VISA-367; 05-26-2017)

Consistent with INA 101(b)(1) the term "child" generally refers to an unmarried person under 21 years of age.

9 FAM 102.8-2(B) Categories of Child

(CT:VISA-515; 03-15-2018)

a. **Categories of Child:** INA 101(b)(1) lists seven categories of the term "child:"

(1) Child Born In Wedlock;

(2) Child Born Out of Wedlock;

(3) Legitimated Child;

(4) Stepchild;

(5) Adopted Child;

(6) Orphan; and

(7) Convention Adoptee.

b. **Genetic Connection:**

(1) Previously, the term "child" as used at INA 101(b)(1) was interpreted to require a genetic connection between the child and the parent.

(2) However, such an interpretation did not adequately account for advances in assisted reproductive technology (ART).

(3) Consequently, birth mothers (also referred to as gestational mothers) who are also the legal parent of the child are to be treated the same as genetic mothers for the purpose of qualifying for immigration benefits.

(4) This policy is retroactive. If you encounter a case in which the child born abroad to a gestational and legal mother was previously denied an immigration benefit under prior interpretation, the child potentially would be eligible for an immigration benefit upon the submission of a new application accompanied by appropriate fees and sufficient evidence that he or she meets all relevant statutory and regulatory requirements. (See 9 FAM 502.2; 9 FAM 502.1-1(C)(2).)

9 FAM 102.8-2(C) Children Born in Wedlock

(CT:VISA-515; 03-15-2018)

a. A child born to a married couple qualifies as the "child born in wedlock" of both individuals under INA 101(b)(1)(A). Therefore, children born out of wedlock who are deemed "legitimate" by virtue of host country law would not qualify for "child" status under INA 101(b)(1)(A), although they most probably would qualify for such status under INA 101(b)(1)(C) or INA 101(b)(1)(D), depending on the terms of the local law and the facts of the case.

b. INA Section 101(b) treats a child as being born "in wedlock" under INA Section 101(b)(1)(A) when the genetic and/or gestational parents are legally married to each other at the time of the child's birth and both parents are the

legal parents of the child at the time and place of birth. (See 9 FAM 502.2, 9 FAM 502.1-1(C)(2).)

9 FAM 102.8-2(D) Children Born Out of Wedlock

(CT:VISA-367; 05-26-2017)

a. **Child Through the Mother Under** INA 101(b)(1)(D)**:**

(1) A "child born out of wedlock" is the "child" of the natural mother under INA 101(b)(1)(D). The natural mother's name on the child's birth certificate may be taken as proof of such relationship.

(2) The term "natural mother" in INA 101(b)(1)(D) includes a gestational mother who is the legal mother of a child at the time and place of birth, as well as genetic mother who is a legal mother of the child at the time and place of birth.

b. **Child Through the Father Under** INA 101(b)(1)(D)**:**

(1) A "child born out of wedlock" is a "child" of the natural father under INA 101(b)(1)(D), provided the father has or had a bona fide parent-child relationship with the child. While an ongoing father-child relationship is not required to establish a "bona fide parent or child" relationship, you must ascertain whether a genuine parent or child relationship, not merely a tie by blood, exists or has existed at some point prior to the offspring's 21st birthday and while the offspring is or was unmarried.

(2) While each case must be determined based on the facts presented, you must be satisfied that the facts demonstrate the existence of a bona fide parent or child relationship before the child's 21st birthday. For instance, although not necessary, the moral or emotional behavior of the father or child toward each other, which reflects the existence of such a relationship, may constitute favorable evidence of the relationship, just as cohabitation may be another element of evidence of such relationship.

(3) Proof of present or former familial relationship may include the:

(a) Father's acknowledgment within the community that the child is his own;

(b) Father's support for the child's needs; and

(c) Father's active concern for child support, instruction, and general welfare, and interest in the child.

9 FAM 102.8-2(E) Legitimated Child

(CT:VISA-1272; 05-03-2021)

a. *For* a child to qualify under INA 101(b)(1)(C), a "legitimated child" must meet the following criteria:

(1) The child must be legitimated under the law of the child's residence/domicile or under the law of the father's residence/domicile;

(2) The father must establish that he is the child's natural father;

(3) The legitimation takes place before the child reaches the age of 18 years; and

(4) The child is in the legal custody of the legitimating parent or parents at the time of such legitimation. (For adoption purposes, legal custody may be granted prior to the issuance of a decree.) (See 9 FAM 502.3-2(B) and 9 FAM 502.3-6.)

b. Please note that a gestational mother who is also the legal mother of the child is to be treated the same as a genetic mother. Thus, the out-of-wedlock child of gestational mother who is also the legal mother of the child, where such child has been legitimated by the father pursuant to the requirements above, would meet the definition of a "child legitimated" in INA 101(b)(1)(C). (See paragraph b of 9 FAM 102.8-2(B) above.).

9 FAM 102.8-2(F) Stepchild

(CT:VISA-1150; 09-14-2020)

a. **Creation of Step-Child Relationship:**

(1) The provisions of INA 101(b)(1)(B) provide for the creation of a step-relationship between the natural offspring (whether or not born out of wedlock) of a parent and that parent's spouse. Such step relationship is created as a result of the marriage of the offspring's natural parent, which includes birth (gestational) mothers, to a spouse and must be based on a marriage that is or was valid for all purposes, including immigration purposes. The offspring must be or have been under the age of 18 at the time the marriage takes place in order to acquire the benefits as a child under INA 101(b)(1)(B). No previous meeting of the offspring and the new parent is required. If the marriage between the natural parent and stepparent is still in effect (i.e., the parties of the marriage have not been legally separated, or the marriage has not been terminated by divorce or by death of the natural parent), there is no requirement that an emotional relationship exist between the stepchild and stepparent.

(2) INA 101(b)(1)(B) makes no distinction between children born in wedlock and those born out of wedlock in respect to stepparent/stepchild relationship. All that is required is that the child be under the age of 18 at the time the marriage creating the status of stepchild occurred. A stepparent/stepchild relationship can also be established for children who were born subsequent to the marriage between the natural parent and the stepparent. For example, a child who is born as a result of an out of wedlock relationship between a married man and another woman would qualify as the stepchild of the married man's wife, since the child was

under 18 when the marriage between the natural parent and the stepparent occurred.

b. **Stepparent/Stepchild Relationships After Termination of Marriage:**

(1) A stepchild who has met the requirements to qualify as a "child" of the stepparent under INA 101(b)(1)(B) may continue to be entitled to immigration benefits, either as a principal or derivative applicant, from such marriage, even though the relationship between the natural parent and the stepparent has been terminated by legal separation, divorce, or by the death of the natural parent, provided the marriage was a valid marriage and the family relationship continues to exist as a matter of fact between the stepparent and stepchild.

(2) The fact that the stepparent petitioner is willing to provide the required Form I-864, Affidavit of Support Under Section 213A of the Act is not by itself sufficient evidence that the family relationship continues to exist between the stepparent and the stepchild. There must be evidence of some form of contact (e.g., letters, electronic mail, telephone calls, etc.), though it is not necessary that the stepparent and stepchild have met in person.

c. **Stepchild Determination in Orphan Cases:** Generally, to qualify as a stepchild under the INA, the marriage creating the stepchild status must have occurred before the stepchild's 18th birthday. USCIS, however, has adopted a narrow interpretation of "stepchild" under INA 101(b)(1)(B) solely for determining whether a child is an "orphan" as the child of a sole or surviving parent. Under this interpretation, a sole or surviving parent's new spouse must have a legal parent-child relationship with the child in order for the child no longer to be considered the child of a sole or surviving parent.

(1) A sole or surviving parent who has married will still be considered, in determining whether a child is an orphan, the child's sole or surviving parent if the petitioner establishes that the sole or surviving parent's new spouse has no legal parent-child relationship to the child under the law of the foreign sending country. (See 9 FAM 502.3-6 for a definition of "sole or surviving parent".)

(2) To establish a legal parent-child relationship:

(a) The stepparent must have adopted the child; or

(b) The stepparent must have obtained legal custody of the child; or

(c) Under the law of the foreign sending country, the marriage between the parent and stepparent must have created a parent-child relationship between the stepparent and the child.

(3) If you are unsure of the legal status of the relationship between a stepparent and a child, contact L/CA.

9 FAM 102.8-2(G) Adopted Child

(CT:VISA-1272; 05-03-2021)

a. Under INA 101(b)(1)(E), *a noncitizen* is defined as a child ("adopted child"), if the child:

(1) Was legally adopted while under the age of 16 (or under the age of 18, if this is the sibling of a child adopted under 16 who meets the requirements of INA 101(b)(1)(E)); and

(2) Has been in the legal custody of, and resided with, the adopting parent(s) for at least two years, provided that no natural parent of any such adopted child must thereafter, by virtue of such parentage, be accorded any right, privilege, or status.

b. See 9 FAM 502.3-2(B) for additional information on the immigrant visa IR-2 adopted child classification.

9 FAM 102.8-2(H) Orphan

(CT:VISA-1096; 07-10-2020)

a. There are three key elements in the "orphan" definition:

(1) The child is under the age of 16 at the time a petition is filed on his or her behalf (or under the age of 18 if adopted or to be adopted together with a natural sibling under the age of 16) and is unmarried and under the age of 21 at the time of petition and visa adjudication;

(2) The child has been or will be adopted by a married U.S. citizen and spouse, or by an unmarried U.S. citizen at least 25 years of age; and

(3) The child is an orphan because either:

(a) The child has no parents because of the death or disappearance, abandonment, or desertion by, or separation from or loss of both parents; or

(b) The child's sole or surviving parent is incapable of providing proper care and has, in writing, irrevocably released the child for emigration and adoption.

(c) See 9 FAM 502.3-6 for definitions of "death, "disappearance," "abandonment," "desertion," "separation," "loss," "sole parent," "surviving parent," "incapable of providing proper care," and "custody."

b. See 9 FAM 502.3-3(B) for additional information on the orphan classification.

9 FAM 102.8-2(I) Convention Adoptee

(CT:VISA-1272; 05-03-2021)

a. There are five key elements to the "Convention adoptee" definition under INA 101(b)(1)(G). All the following must be true for a child to be eligible for the Convention adoptee classification:

(1) The child is under the age of 16 at the time a petition is filed on his or her behalf (taking into account special rules on filing dates for children aged 15-16) or before his or her 18th birthday if he or she is the natural sibling of another foreign national child who has immigrated or will immigrate based on adoption by the same adoptive parents, is unmarried, and is habitually resident in a country that has a treaty relationship with the United States under the Convention;

(2) The child has been adopted or will be adopted by a married U.S. citizen and spouse jointly, or by an unmarried U.S. citizen at least 25 years of age, habitually resident in the United States, whom USCIS has found suitable and eligible to adopt, with the intent of creating a legal parent-child relationship;

(3) The child's birth parents (or parent if the child has a sole or surviving parent), or other legal custodian, individuals, or entities whose consent is necessary for adoption, freely gave their written irrevocable consent to the termination of their legal relationship with the child and to the child's emigration and adoption (See 9 FAM 502.3-6 for definitions of "birth parent," "legal custody," "sole parent," "surviving parent," and "written irrevocable consent.");

(4) If the child has two living birth parents who were the last legal custodian who signed the irrevocable consent to adoption, they are determined to be incapable of providing proper care for the child;

(5) The child has been adopted or will be adopted in the United States or in the Convention country in accordance with the rules and procedures elaborated in the Hague Convention and the Intercountry Adoption Act of 2000, including that accredited or approved adoption service providers (see 9 FAM 502.3-6) were used where required, and there is no indication of improper inducement, fraud or misrepresentation, or prohibited contact associated with the case.

b. See 9 FAM 502.3-4(B) for additional information on the Convention adoptee classification.

9 FAM 102.8-2(J) Parent

(CT:VISA-367; 05-26-2017)

The term "parent," "father," or "mother" means a parent, father, or mother only where the relationship exists by reason of any of the circumstances listed in INA 101(b)(2), except for certain cases under INA 101(b)(1)(F), as noted in 9 FAM

502.3-3(B)(5). Parent, father, and mother, as defined in INA 101(b)(2), are terms which are not changed in meaning if the child becomes 21 years of age or marries. In the context of Parent in Convention adoption cases see 9 FAM 502.3-4(C)(4).

9 FAM 102.8-2(K) Son or Daughter

(CT:VISA-1272; 05-03-2021)

a. The INA defines "son" or "daughter" as someone who has at any time met the definition of child in INA 101(b)(1). It includes only a person who would have qualified as a "child" under INA 101(b)(1) if the person were under 21 and unmarried.

(1) **Illegitimate Child of Mother:** *A person* who was born out of wedlock and is the son or daughter of a U.S. citizen or LPR mother is a "son" or "daughter" within the meaning of INA 203(a)(1) if the conditions of INA 101(b)(1)(C) (legitimation while in the mother's custody before reaching the age of 18) were met.

(2) **Illegitimate Child of Father:** *A person* who was born out of wedlock and is the son or daughter of a U.S. citizen or LPR father is a "son" or "daughter" within the meaning of INA 203(a)(1) if the conditions of INA 101(b)(1)(C) (legitimation while in the father's custody before reaching the age of 18) or INA 101(b)(1)(D) (the father had a bona fide parent or child relationship prior to child's 21st birthday) were met.

(3) **Stepson or Stepdaughter:** A stepson or stepdaughter is a "son" or "daughter" provided that the stepchild had not reached the age of 18 at the time the relationship was established.

b. See 9 FAM 502.2-3 for information on IV classification as the son or daughter of a U.S. citizen or LPR.

9 FAM 102.8-3 SIBLING RELATIONSHIPS

9 FAM 102.8-3(A) Who Qualifies as a Sibling?

(CT:VISA-367; 05-26-2017)

a. Siblings who meet the definition under the INA 101(b)(1) of a child of at least one common parent, are "brothers" or "sisters" within the meaning of INA 203(a)(4) and are eligible for preference under that provision. Siblings by virtue of a relationship that does not meet the criteria in INA 101(b)(1), such as stepsiblings based on a marriage that occurred after one of the siblings reached 18 years, are not siblings for the purposes of INA 203(a)(4).

b. See 9 FAM 502.2-3 for additional information on family preference IV classification for brothers and sisters of U.S. citizens.

9 FAM 102.8-3(B) Siblings with the Same Mother

(CT:VISA-367; 05-26-2017)

Brothers or sisters who have the same mother but different fathers, including those born out of wedlock and not legitimated, are “brothers” or “sisters” within the meaning of INA 203(a)(4) and are eligible for preference status under this provision.

9 FAM 102.8-3(C) Siblings with the Same Father

(CT:VISA-367; 05-26-2017)

Brothers or sisters of half-blood who have the same father but different mothers are eligible for preference under INA 203(a)(4) if both siblings qualified as a child under INA 101(b)(1).

9 FAM 102.8-3(D) Stepsiblings

(CT:VISA-367; 05-26-2017)

A stepbrother or stepsister is a "brother" or "sister" within the meaning of INA 203(a)(4) only if both parties were under the age of 18 when the relationship was established.

9 FAM 102.8-3(E) Adoptive Siblings

(CT:VISA-367; 05-26-2017)

An adoptive brother or sister of a U.S. citizen, who is at least 21 years of age, is eligible for preference status under INA 203(a)(4) if the adoptive sibling qualifies under INA 101(b)(1)(E).

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