

(4) The child is present in the United States, unless the petitioner, after compliance with the requirements of this subpart, either adopt(s) the child in the Convention country, or else, after having obtained custody of the child under the law of the Convention country for purposes of emigration and adoption, adopt(s) the child in the United States. This subpart does not require the child's actual return to the Convention country; whether to permit the child's adoption without the child's return is a matter to be determined by the Central Authority of the country of the child's habitual residence, but approval of a Form I-800 does not relieve an alien child of his or her ineligibility for adjustment of status under section [245](#) of the Act, if the child is present in the United States without inspection or is otherwise ineligible for adjustment of status. If the child is in the United States but is not eligible for adjustment of status, the Form I-800 may be provisionally approved only if the child will leave the United States after the provisional approval and apply for a visa abroad before the final approval of the Form I-800.