

he or she must be under 21 at the time of immigration to the United States.<sup>32</sup>

### **b. Meeting the Statutory Definition of “Orphan”**

The most significant hurdle in this second stage of assessment is qualifying the child as an “orphan.” Although in the common vernacular we normally refer to a child as an orphan only if the child's parents are deceased, immigration law defines a child as an orphan if:

(1) both of the child's parents have died, disappeared, abandoned or deserted the child; or if the child has been separated from them due to the involuntary termination of their parental rights by the country of origin or the child has lost them permanently due to civil unrest, a natural disaster, or some other calamitous event beyond the parents' control; or

(2) the sole or surviving parent is not capable of providing the child with proper care and has irrevocably released the child for adoption and emigration. 8 U.S.C. § 1101(F)(I).

The terms used in the above criteria are defined narrowly in 8 C.F.R. §204.3(b):

*Abandonment* must include both the intent to and actual surrender of all parental rights, control and custody. Relinquishment of a child to prospective adoptive parents, or for a specific adoption, is not regarded as abandonment. Relinquishment to a third party for care in anticipation of an adoption also will not be considered abandonment, unless the third party is a government agency, court, adoption agency, or orphanage legally authorized by the country of origin to receive such a relinquishment.

*Desertion* requires that the child has become a ward of a governmental authority because the parents have willfully forsaken the child and refused to fulfill their parental responsibilities.

*Disappearance* means that following a reasonable effort to locate both parents, as determined by a governmental authority, their whereabouts are unknown, their absence from the child's life is inexplicable, and there is no reasonable hope of their reappearance.

*Separation* is the involuntary termination of parental rights by a governmental authority, upon notice to the parents and after opportunity to be heard, for good cause in accordance with the law of the foreign sending nation.

*Loss* refers to an involuntary severance or detachment from a parent due to a natural disaster, civil unrest, or other calamitous event that is beyond the parent's control and is verified by a governmental authority in accordance with the law of the foreign sending

---

<sup>32</sup> 7 Immigration Law Service 2d PSD Foreign Affairs Manual 502.3 (Westlaw Aug. 2019 Update), 9 FAM 502.3. Adoption-based Classifications and Processing.