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With the exception of abandonment (the intentional surrender of all parental rights to an entity permitted by law to receive such a relinquishment), all of the other bases on which a child with two parents can become “orphaned” require affirmative action or intervention by a governmental authority confirming the status.

A recent “disappearance” AAO case illustrates that this requirement of governmental investigation is applied stringently. Petitioner sought an orphan petition for a 15 month old Pakistani child, ultimately submitting three guardianship orders from a Pakistani family court indicating that while an alleged birth mother gave custody to a Welfare Organization, the alleged birth mother and the welfare organization’s president were both subsequently arrested for child abduction and child selling. However, the Pakistani family court in the second and third orders giving guardianship to the adopters determined the whereabouts of the actual birth parents were unknown and could not be located and that the petitioner and his spouse “tried their level best to find the birth parents via police and published the notices in national news papers [sic].”³³ Nevertheless, the AAO, citing a USCIS Policy Memorandum,³⁴ noted that primary evidence of the birth parents’ disappearance is a decree from a court or other competent authority which makes the child a ward of the state because of such disappearance and unconditionally divests the parents of all parental rights over the child. Moreover, the AAO noted that no criminal investigation was conducted in Pakistan after the arrest to determine whether the child was one of the abducted children from the hospital, which would be relevant to identifying her birth parents. Thus, even though making the child a ward of the court is not included in the regulation’s definition of disappearance, its absence combined with the lack of a law enforcement investigation to identify the birth parents rendered the child ineligible for the orphan visa on the grounds of disappearance, which requires that both parents “have unaccountably or inexplicably passed out of the child’s life, their whereabouts are unknown, there is no reasonable hope of their reappearance, and there has been a reasonable effort to locate them.”³⁵

A child of a sole or surviving parent may become an “orphan” if that parent irrevocably releases the child for adoption and immigration and is incapable of providing the child with proper care. The incapacity to care for the child is the inability to provide for the child’s basic needs, consistent with the local standards of the country of origin. 8 C.F.R. §204.3(b)

Under some circumstances, the mother of a child born out of wedlock may be considered to be a sole parent. This is because the birth father of an out-of-wedlock child is not considered a

³³ In re A-S-N, 2019 WL 2423169 (DHS), May 21, 2019, at *2.

³⁴ USCIS Policy Memorandum, PM 602-0116, Guidance on conducting Form I-604, Determination on Child for Adoption, Orphan Determinations 17 (June 17, 2015).

³⁵ In re A-S-N, 2019 WL 2423169 (DHS), May 21, 2019, at *3.