

parent under the statute if he has disappeared or abandoned or deserted the child, or if he has irrevocably released the child in writing for adoption and emigration. 8 U.S.C. § 1101(b)(2). However, the father is a parent if he has legitimated the child under the law of the father's place of domicile at a time when the child was in his legal custody. 8 U.S.C. §1101(b)(1)(F). Moreover, the regulations provide that this definition is not applicable to children born in countries “which make no distinction between a child born in or out of wedlock, if all such children are considered “legitimate.” 8 C.F.R. §204.3(b).

*Rogan v. Reno*, 75 F. Supp. 2d 63 (E.D. N.Y. 1999), illustrates the restrictions of the “orphan definition.” The petitioners sought to adopt their niece, a newborn who was the fourth child of the petitioning wife’s sister and her unmarried partner. The prospective adoptive mother was present at the baby’s birth and, with the birth parents’ permission, lived with the baby for six months away from the birth family, after which she and her husband adopted the baby girl, with the birth mother’s consent and without objection from the birth father. The federal court confirmed the denial of the orphan visa petition, however, because the child was not “abandoned,” since under the regulatory definition, the relinquishment “had to occur independently of and prior to Ederlina Rogan’s petition to adopt” the baby. As the regulations clarify, relinquishment to prospective adopters or for a specific adoption is not “abandonment” under the statute.<sup>36</sup> Moreover, the birth mother was not a “sole parent,” even though the child was born out of wedlock, because the birth father had not disappeared, abandoned, or deserted the child, as those terms are defined in the regulations, nor had he specifically irrevocably released the child in writing for adoption and emigration. But even had he done so, the court observed that the child still would not have qualified as an orphan because the birth mother was capable of providing for her care. The court found that the birth parents lived together and

---

<sup>36</sup> In many cases the AAO has held that parental consent to the adoption of a child by a specific person is not abandonment. *E.g., In re [Name Redacted]*, 2010 WL 6527468 (INS) (AAO June 10, 2010). In another Philippine aunt/uncle adoption, the AAO observed that relinquishment to the Philippine court handling the adoption was not sufficient, as the child was never placed in the legal custody or control of the Philippine government. To establish abandonment, a Philippine child must be committed by way of Deed of Voluntary Commitment to the Department of Social Welfare and Development prior to the matching. *In re [Name Redacted]*, 2008 WL 5326432 (INS) (AAO Aug.20, 2008). Even when such a Deed has been signed, however, the AAO has rejected abandonment as a ground when the document was signed in anticipation of a planned adoption by an aunt and uncle. *In re [Name Redacted]*, 2006 WL 5914256 (INS) (AAO Nov. 21, 2006). Similarly, placing a child in an orphanage in anticipation of a specific adoption will not establish abandonment. *In re [Name Redacted]*, (AAO March 17, 2003), 80 No. 21 Interrel 749 (Westlaw May 23, 2003). *Cf. In re [Name Redacted]*, 2006 WL 5914918 (INS) (AAO Dec. 12, 2006) (Birth parents found to have *deserted* child, who was given to petitioner as infant to raise, under mistaken belief he was the biological father, because the birth father and whereabouts of the birth mother were unknown, after well documented attempts to locate her, and court had granted a petition for involuntary commitment of the child to the DSWD, and thus became a ward of a competent authority prior to her adoption by petitioner.)