

supported their three other children, meeting their basic needs according to local standards. The birth mother enjoyed an above average standard of living because of the birth father's employment, which the court took into account because nothing in the regulations limited the court's assessment to only money earned by the sole parent. Thus, *Rogan* illustrates that an adoption that is legal in the country of origin and would have been legal under the laws of most U.S. states was not sufficient to qualify the child for immigration under an "orphan" visa.

Several recent Office of Administrative Appeals (AAO) decisions provide insight into how counsel might assist a petitioner in proving that a sole or surviving parent is incapable of providing support. In one case involving a specific relinquishment of rights by a birth mother to petitioner, following the death of the birth father, the administrative judge accepted as sufficient (1) a letter from a chartered accountant in India that included a financial assessment of the birth mother's income and compared it to the minimum monthly cost of food and shelter; and a letter from the Punjab State Welfare Society that discussed the child's living conditions.<sup>37</sup> In another case in which a petitioner adopted his wife's great-nephew, the AAO found sufficient the bank statements, checks and receipts documenting the money sent by petitioner to Peru to pay a neighbor to feed the mother and child after the relative who previously supported them had died, a letter from the boys home where the child was placed after the Peruvian adoption was finalized, and a letter from the mother stating she did not have sufficient means to care for her son.<sup>38</sup> But the statement of the attorney handling an adoption in Nigeria that the birth parent had lost her job and home, accompanied by the birth parent's own statement she was sick, was deemed insufficient, particularly in the absence of evidence of local standards.<sup>39</sup> The absence of authoritative reports from a "competent authority" establishing the inability to support in compliance with local standards is at the heart of many of the denials or orphan visas to aunt/uncle adopters.<sup>40</sup>

### **c. Child is Adopted Abroad or Approved for Emigration and Adoption by Country of Origin**

To qualify for an orphan visa, a child must have been adopted in the child's country of origin or the country of origin must have approved the child's emigration for adoption in the

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<sup>37</sup> *In re [Name Redacted]*, 2008 WL 5651986 (INS) (AAO Nov. 6, 2008).

<sup>38</sup> *In re [Name Redacted]*, AAO Nov. 2, 2000, 86 No. 5 Interrel 348 (Westlaw).

<sup>39</sup> *In re [Name Redacted]*, 2010 WL 6527418 (INS) (AAO June 18, 2010). *See also In re [Name Redacted]*, 2009 WL 1450630 (INS) (AAO Jan. 7, 2009) (In another nephew adoption case, birth mother was also held to be able to provide care, when child was living with her and grandparents and unemployed mother had secondary education degree, despite multiple affidavits from family that grandfather could not support them on his salary)

<sup>40</sup> *See, e.g., In re [Name Redacted]*, 2008 WL 5745332 (INS) (AAO Dec. 2, 2008).