

(1) a sole or surviving parent need not be incapable of providing proper care; and

(2) married parents (or two living parents) may consent if they are incapable of providing proper care.

The facts of *Rogan v. Reno*, 75 F. Supp. 2d 63 (E.D. N.Y. 1999), one of the orphan visa cases discussed above, provide an illustration of these differences. In *Rogan*, the court held that even if the birth mother could have been considered a sole parent, the child was ineligible for an orphan visa because she was not incapable of providing proper care. For a Convention visa, if the mother had been determined to qualify as a sole parent, there would have been no need to establish inability to provide for the child because it is sufficient if the sole or surviving parent consents, which the birth mother did in that case. Moreover, had both parents been incapable of providing care (probably not true in the actual case), they could have established eligibility for a Convention visa by both giving consent, whereas a child with two parents is ineligible for an orphan visa in those circumstances.

In addition, the Convention regulations define statutory terms more broadly than the orphan regulations. A "sole parent" is defined in the orphan regulations as a mother of an illegitimate child whose father has severed all parental ties or irrevocably released a child for adoption, but under the orphan regulations this category is not applicable to children born in nations that make no distinction between children born in or out of wedlock. 8 C.F.R. §204.3(b). The Convention regulations define "sole parent" to include the mother or father of a child whose other parent has been determined by a competent authority to have abandoned or deserted the child or disappeared from the child's life, and contains no caveat about the sending nation's legal distinctions regarding out-of-wedlock children. 8 C.F.R. § 204.301.

Moreover, although the definitions for desertion and disappearance are virtually identical to those in the orphan visa regulations, abandonment is defined slightly more broadly in the Convention regulations. Under the orphan regulations, 8 C.F.R. § 204(b):

A relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment. Similarly, the relinquishment or release of the child by the parents to a third party for custodial care in anticipation of, or preparation for, adoption does not constitute abandonment unless the third party (such as a governmental agency, a court of competent jurisdiction, an adoption agency, or an orphanage) is authorized under the child welfare laws of the foreign-sending country to act in such a capacity.

By contrast, the Convention visa regulation provides that a parent's knowledge that a specific person might adopt the child does not void the abandonment, as long as it was not conditioned on adoption by that specific person. 8 C.F.R. § 204.301 (b). Under both sets of regulations, one parent must be deceased for the other to be a surviving parent. 8 C.F.R. § 204.301 (b).