

The Convention regulations offer more clarification regarding stepparents as well, providing that a stepparent is not considered a parent if there is no legal parent-child relationship between the child and stepparent under the law of the Convention country of origin. Moreover, even a stepparent who does have a legal parent-child relationship may be found to have "disappeared" if he or she never knew of the child's existence or of his or her legal relationship to the child. 8 C.F.R. § 204.301. Past interpretations of the orphan visa regulations have disqualified parents from categorization as sole or surviving parents if the child also had a stepparent.<sup>55</sup>

For a child with two parents, the incapacity to care for that child therefore becomes crucial to eligibility, and failure to prove that criteria has been grounds for denial. In one recent case, the AAO found that initial statements by the birth parents, reporting that they were consenting to an uncle/aunt placement because the adopters were infertile, undermined the credibility of subsequent documentation of inability to support, and in any event, the lack of evidence on local standards rendered documentation insufficient, despite an affidavit by a local agency that the birth father's income was below the poverty line and pictures of a house in poor repair claimed to be the birth family's home.<sup>56</sup>

In a similar case from India involving a "familial surrogacy arrangement" the AAO refused to approve a Convention visa for a child conceived, according to his birth parents, for the sole reason of placing him with an aunt and uncle who were infertile. The AAO found that the birth mother was a teacher and the birth father owned his own business and supported another child and his parents in the household. Despite the birth parents' claims that they would place the child in foster care if he was not adopted, because the birth mother could not afford to give up her teaching job to stay home for child care, they were suffering financial problems, and the cost of schooling was high, the evidence was deemed insufficient to support their claim that they could not provide for his basic needs, where no evidence was submitted regarding local standards in India. The AAO rejected petitioner's claims that a child conceived for intra-family placement should be exempted from this requirement. Instead, the AAO had quite the opposite reaction, finding that even if petitioners were able to prove "inability to support," the approval of this petition would "accord legitimacy to the practice of conceiving children for the sole purpose of placing them for adoption, a type of abuse the Hague Convention was designed to prevent."

---

<sup>55</sup> Aarti Kohli & Kathleen M. Sullivan, *Intercountry Adoption, A Practitioner's Update*, 01-07 Immigr. Briefings 1 (2001).

<sup>56</sup> *In re [Name Redacted]*, AAU SIM 09 226 10016, 2010 WL 3692535 (INS)(AAO March 15, 2010). For additional cases in which a Convention visa was denied for failure to prove incapacity of the parents to care for the child (several of which were also adoptions by relatives), see e.g., *Matter of W-I-N-J*, 2016 WL 4072896 (DHS); *In re [Name Redacted]*, 2014 WL 3888363 (DHS); *In re [Name Redacted]*, 2014 WL 4114195 (DHS); *In re [Name Redacted]*, 2013 WL 8124320 (INS).