**Orphan Status Waiver**

**Adoptive Applicant Name(s): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

When adopting a child from a Non-Hague country through the UAA orphan process, the child must be an eligible orphan according to the laws set forth by the Immigration and Nationality Act (INA), the Universal Accreditation Act (UAA) and all such regulations set forth by the United States government with regards to these laws. The definition of an orphan can be found in the attached document which is provided by Family Resource Center (FRC) based upon US laws and regulations. This is provided solely as a courtesy and should not be interpreted as the actual laws and regulations or a legal opinion of FRC of these laws and regulations.

In certain circumstances the eligibility of the child with regard to their orphan status cannot be easily defined. In these cases, whether or not to proceed with the adoption and home study process should be considered carefully. Additional research should be completed by the adoptive applicant(s) including, but not limited to, the consultation with an immigration/adoption attorney, local officials in the child’s country of origin and/or the United States Citizenship and Immigration Service (USCIS). FRC strongly recommends consultation with an immigration/adoption attorney in these cases. An attorney will be able to provide specific legal counsel that FRC is not authorized to provide. You will be asked to note below your decision regarding consultation with an attorney.

It is the decision of the adoptive applicant(s) to proceed or stop the adoption process if there are questions regarding the eligibility of a child with regards to orphan status. Should the adoptive applicant(s) choose to proceed, the final determination with regards to the child’s eligibility will be made by USCIS and/or USDOS and not by FRC. As such, by signing this waiver, the adoptive applicant(s) release FRC, its employees, officers, directors and all other parties affiliated with FRC from any and all liability pertaining to the risks associated with these laws and regulations.

**Please mark the applicable statement:**

* I/We have consulted with an immigration/adoption attorney prior to the signing of this document. The name of the attorney we consulted is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. I/We also understand that the information provided by FRC is not a legal opinion or advice and has only been provided to us as a courtesy.
* I/We have declined legal counsel with regards to this matter and understand the added risks associated with this decision. I/We also understand that the information provided by FRC is not a legal opinion or advice and has only been provided to us as a courtesy.

Signing below constitutes the adoptive applicant(s) understanding and agreement to the above statements.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(adoptive applicant) (date) (adoptive applicant) (date)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(FRC representative)

**United States Citizenship and Immigration Service (USCIS) and**

**United States Department of State (USDOS)**

**Definition of an Orphan**

**Specifically Related to Non-Hague Adoptions**

According to the above mentioned laws and regulations, an orphan is defined as follows:

A child may be considered an orphan if he or she has no parents because of the death or disappearance, abandonment or desertion by, or separation from or loss of both parents (as defined below).

A child may also be considered an orphan if they have a sole or surviving parent unable to care for the child who irrevocably releases the child for emigration or adoption.

A surviving parent is defined as a child’s living parent when the child’s other parent is dead, and the child has not acquired another parent, which may include a stepparent (death of the parent as defined below).

A sole parent is one who is the mother of the child and whose situation meets all of the following criteria:

The child was born out of wedlock (regardless of whether or not local law deems all children to be legitimate at birth);

The child has not been legitimated under the law of the child’s residence or domicile or under the law of the natural father’s residence or domicile while the child was in the legal custody of the legitimating parent or parents;

The child has not acquired another parent under INA 101(b)(2), which may include a stepparent; and

The natural father of the child is unknown, or has disappeared or abandoned or deserted the child (as defined below).

Evidence of sole parent status would be the birth certificate of the child or other proof of out-of-wedlock status, and documentation on the whereabouts or status of the natural father.

Note that under current regulations, a father may not be considered to be a child’s sole parent, and therefore could only release a child for emigration and adoption if he is a surviving parent.

Definitions:

Death of the parent(s):

A child whose natural parents are deceased and who has not acquired another parent (such as a stepparent or legal adoptive parent).

Primary evidence that the biological parent has died is a death certificate in the name of the parent.

Disappearance of the parent(s):

The parent(s) has unaccountably or inexplicably passed out of the child's life; his or her or their whereabouts are unknown; there is no reasonable hope of reappearance; and there has been a reasonable effort to locate them as determined by a competent authority in accordance with the laws of the foreign-sending country.

Primary evidence of disappearance consists of a decree from a court or other competent authority making the child a ward of the state by virtue of such disappearance and unconditionally divesting the parent(s) of all parental rights over the child.

Abandonment of the parent(s):

“Abandonment” means that the parents have willfully forsaken all parental rights, obligations, and claims to the child, as well as all control over and possession of the child, without intending to transfer, or without transferring, these rights to any specific person(s). Abandonment must include not only the intention to surrender all parental rights, obligations, and claims to the child, and control over and possession of the child, but also the actual act of surrendering such rights, obligations, claims, control, and possession. A relinquishment or release by the parent(s) to the prospective adoptive parents or for a specific adoption does not constitute "abandonment." Similarly, the relinquishment or release of the child by the parent 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. A child released to a government-authorized third party, however, could be considered to have been abandoned even if the parent(s) knew at the time that the child would probably be adopted by a specific person or persons, so long as the relinquishment was not contingent upon adoption by a specific person or persons.

Primary evidence of abandonment is a document signed by the parent(s) unconditionally releasing the child to an orphanage, or a decree from a court or other competent authority making the child a ward of the state and unconditionally divesting the parent(s) of all parental rights over the child.

Desertion of the parent(s):

"Desertion" means that the parent(s) has willfully forsaken the child and has refused to carry out normal parental rights and obligations and that, as a result, the child has become a ward of a competent authority in accordance with the laws of the foreign-sending country. Desertion does not mean that the parent(s) has disappeared, but rather that he and/or she refuses to carry out his or her parent rights and obligations towards the child. Desertion differs from abandonment in that the parent(s) has not taken steps to divest him or herself of parental duties, but that parent's inaction has caused a local authority to step in and assume custody of the child.

Primary evidence of desertion consists of a decree from a court or other competent authority making the child a ward of the state by virtue of such desertion and unconditionally divesting the parents of all parental rights over the child.

Separation from the child’s parent(s):

"Separation" means the involuntary severance of the child from his or her parent(s) by action of a competent authority for good cause and in accordance with the laws of the foreign-sending country. This is often called "termination" of parental rights and often occurs because of child abuse or neglect, or because a competent authority deems the parent to be "unfit." The parent(s) must have been properly notified and granted the opportunity to contest such action. The termination of all parental rights and obligations must be permanent and unconditional.

Primary evidence of separation consists of a decree from a court or other competent authority making the child a ward of the state by virtue of such separation and unconditionally divesting the parent(s) of all parental rights over the child.

Loss from the child’s parent(s):

"Loss" means the involuntary severance or detachment of the child from the parents in a permanent manner such as that caused by a natural disaster, civil unrest, or other calamitous event beyond the control of the parents, as verified by a competent authority in accordance with the laws of the foreign sending country.

Primary evidence of loss consists of a decree from a court or other competent authority (such as an empowered international organization) making the child a ward of the state by virtue of such loss and unconditionally divesting the parent(s) of all parental rights over the child.