

**ASSESSING U.S. AND INTERNATIONAL REGULATION
OF INTERNATIONAL ADOPTION
THROUGH THE PRISM OF THE CAMBODIAN TRAFFICKING SCANDAL**

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Outline and Supplemental Materials

I. International Adoption of Cambodian Children

A. Scope of U.S. Adoptions Over Past Decade

- During the mid-1990s the adoption of Cambodian children by U.S. citizens increased significantly.
- Between 1997 and 2001, over 1200 Cambodian children were placed for adoption in the United States.
- Cambodia has both private and government sponsored orphanages. Many of the adoptions were facilitated by private orphanages.

B. U.S. Suspension of Cambodian Adoptions

1. December 2001 Suspension

- During Fall, 2001, a Cambodian human rights organization, LICADO (Cambodian League for the Promotion and Defense of Human Rights) notified the U.S. Embassy in Cambodia of several cases of abducted children. One such infant was discovered in a local orphanage having been identified for and awaiting a U.S. adoption.
- In addition, I-604 investigations by U.S. Embassy personnel identified questionable paperwork that triggered field investigations uncovering questionable documentation practices that raised serious concerns about the orphan status of children identified for foreign adoption.
- In December 2001, the U.S. Department of State suspended the processing of orphan petitions from Cambodia, thereby preventing immigration of Cambodian children for adoption in the United States. That suspension, the first of its kind by the U.S. government, is still in effect.
- Reasons provided by the Dept. of Justice publications:
 - lack of systematic record keeping by Cambodian orphanages regarding how the children came to the orphanage
 - discrepancies in documentation establishing that children were abandoned
 - inadequate birth certificates.

2. U.S. Investigation (Operation Broken Hearts)

During the spring of 2002, U.S. special agents investigated in Cambodia to determine if U.S. citizens were involved in trafficking. The investigation uncovered:

- systematic solicitation of infants and children in poor villages by baby recruiters and baby buyers
- medical testing of infants and children from willing families for AIDS and hepatitis
- payments of \$20-\$200 and rice to poor families for healthy children, sometimes accompanied by promises of future contact, future payments, or eventual immigration to U.S.
- relocation of infants and small children to orphanages or stash houses, often with filthy conditions
- documentation obtained from Cambodian government officials declaring children to be orphans by reporting parentage as unknown.

C. Prosecution of Lauryn Galindo and Lynn Devin

- Felony charges were filed against Galindo and Devin, U.S. citizens and sisters who operated Seattle International Adoptions from January 1997 to December 2001, the largest agency in the United States handling foreign adoptions, which placed over 700 of the 1200 children who immigrated to the United States for adoption during this period.
- Galindo worked in Cambodia identifying children for adoption, handling placement, and assisting U.S. adoptive parents in filling out INS forms to obtain visas. Devin directed the agency in Seattle and recruited prospective adoptive parents.
- Both were charged with federal felonies of committing visa fraud and money laundering, and Galindo was charged with “structuring,” depositing money in such a way as to avoid Currency Transaction Reports.
- Both entered plea agreements.
- Galindo was sentenced on November 19, 2004 to 18 months in prison, followed by 3 years supervised release, prohibited from engaging in adoption employment or involvement during that period, and required to perform 300 hours of community service and pay over \$60,000 in restitution. In addition, she forfeited a home worth \$1.4 million, a Jaguar, and various bank accounts.

In her plea agreement, Galindo admitted:

- she switched children on several occasions, using biographical information for a child who had dies or become ill as the basis for a visa application for a different child;
- she persuaded a couple who backed out at the last minute to complete the visa application, and then she took the child to the U.S., and, after advising immigration authorities in the U.S. that

- the adoption had disrupted, placed the child with a different couple;
- she received over \$150,000 from the 17 adoptions named in the criminal complaint, and significant portions of those funds were used to pay Cambodian ministry clerks and other government officials to process documentation that supported the applications for the immigrant visas;
- she amassed substantial personal wealth from the adoption fees, including keeping a significant portions of the “orphanage donation” she solicited from adoptive parents of \$3500;.

In addition, the government alleged that:

- some of the orphanages with which she was affiliated (in one case she was on the board) were in very poor condition
 - evidence of the donations she claimed to have given was insufficient;
 - two of her Cambodian associates told investigators Galindo knew of the payments they made to birth mothers to induce relinquishment (though she was not charged and did not admit to trafficking).
- Devin was sentenced on December 17, 2004 to six months of house arrest with electronic monitoring, and ordered to forfeit \$110,000, pay \$10,900 in restitution, and pay a \$30,000 fine. Her sentence was lighter because
 - the judge determined her motivation was humanitarian and not wealth
 - she cooperated with authorities and provided information about her sister
 - there was no evidence she knew of payments to birth parents, although she did know children’s documentation was switched if adoption of the first child fell through.

D. Current Status

- France, Netherlands, Switzerland, Belgium, and Britain (June 2004) have all suspended adoptions from Cambodia, in addition to the United States.
- Press reports as recently as March 2004 that traffickers still comb poor provinces offering payments for children for adoption. At the same time, selling children into domestic service or prostitution sometimes occurs.

II. U.S. International Adoption Law - Existing Deterrents to Trafficking in the Immigration Process

A. Visas

Two types (and in the future, three) types of immediate relative visas (not subject to numerical limitation) are available to adopted children. The requirements are outlined on the following chart.

THREE AVENUES TO ACHIEVE IMMEDIATE RELATIVE CLASSIFICATION FOR A CHILD IMMIGRATING FOR ADOPTION

Adopted Child Petition

8 USC 1101 (b)(1)(E)

1. Child adopted under 16 (or sibling and under 18); 1101 (b)(1)(E), and petition filed for unmarried child before child is 21,

2. Adopted by a U.S. citizen; 1101 (b)(1)(E)

-Adoption must be valid in country where it took place, and need not meet requirements for a legal adoption if it occurred in United States

3. Child must have been in legal custody of adoptive parent or parents 2 years and have resided with adoptive parent or parents two years at time petition (I- 130) is filed. 1101 (b)(1)(E)

(To ensure bona fide parent child relationship)

Orphan Petition
8 USC 1101 (b)(1)(F)

1. Adopted Child petitions - feasible only for adoptive parents living abroad.
2. Orphan Petitions - Used by vast majority of U.S. adoptive parents currently

1. 1. Child under 16 when petition filed (or sibling and under 18) 1101 (b)(1)(F)

2. Adopted by U.S. citizen and spouse or unmarried US. citizen 25 yrs. old when I-600 filed 1101 (b)(1)(F), and 24 yrs. old when I-600 A filed 204.3(b). An alien spouse residing in US must be in lawful immigration status. 204.3(b)

3. Meets INS def of orphan-death or disappearance of, abandonment or desertion by, separation or loss from both parents, or sole or surviving parent incapable of providing proper care and has consented; 1101 (b)(1)(F)

4. BCIS determines child will receive proper care from adoptive parent; 1101 (b)(1)(F)

5. If adoption is to take place here, country of origin must approve emigration for adoption, and any state preadoption requirements must be satisfied; 204.3 (d)(1)(f)

6. Valid home study with favorable recommendation; 1154(d); 204.3

Convention Adoption
8 USC 1101(b)(1) (G)

1. Child under 16 when petition filed (or sibling and under 18) 1101 (b)(1)(G)

2. Adopted by U.S. citizen and spouse or unmarried US. citizen 25 yrs. old when I-600 filed; 1101 (b)(1)(G) (no regs yet)

3. Parents or sole or surviving parent have consented or institution with custody have consented, and if there are two living parents, they are incapable of providing proper care, and BCIS determines child’s relationship with birth parents has been terminated and purpose of adoption is to form bona-fide parent-child relationship; 1101 (b)(1)(G)

4. BCIS determines child will receive proper care from adoptive parent; 1101 (b)(1)(G)

5. If adoption is to take place here, country of origin must approve emigration for adoption, and any state preadoption requirements must be satisfied; 1101 (b)(1)(G)

6. Valid home study with favorable recommendation; 1154(d)

7. child from nation that is party to Hague Convention; 1101 (b)(1)(G), and certification from Central Authority of country of origin. 1154(d)(2)

a. Definition

Under 8 U.S.C. § 1101(b)(1)(F) and the interpreting regulations, 8 C.F.R. § 204.3, a child is an orphan due to both parents are unavailable due to:

- death;
- disappearance [the parents whereabouts are unknown after a reasonable effort has been made to locate them, their absence from the child's life is inexplicable, and there is no reasonable hope for their reappearance];
- desertion [the child is a ward of a governmental authority because the parents have willfully forsaken the child and refused to fulfill parental responsibilities];
- separation [requires the involuntary severance of the child from his parents by governmental authorities for good cause] ;
- loss [due to a permanent involuntary severance or detachment due to a natural disaster, civil unrest, or another calamitous event, verified by governmental authorities of the country of origin]; or
- abandonment [Abandonment requires the intent and act of surrendering all parental rights, without intending to transfer them to any specific person. A relinquishment to a third party for custodial care in anticipation of adoption also is not abandonment, unless the relinquishment is made to a third party is an entity like a government agency or an orphanage authorized under by the law of the country of origin to make adoptive placements.]

A child may be also an orphan if the child is relinquished by the sole surviving parent for emigration and adoption, but only if that parent is found to be incapable of providing support, as measured by the local standards of the country of origin.

Mothers of out of wedlock children can be sole surviving parents if the father has disappeared, abandoned, or deserted the child, or if the father irrevocably releases the child for immigration and adoption. This provision is not applicable, however, if the country of origin makes no distinction between children born in or out of wedlock, since all such children would be considered legitimate.

b. Anti-trafficking provision

8 CFR § 204.3(i) requires that orphan petitions be denied if a prospective adoptive parent or someone working on his or her behalf has given or will give money or other consideration to the child's parent, agent, or another person or entity as payment or inducement to release the child. Reasonable payments for administrative or legal proceedings or medical services related to the adoption are permissible.

c. I- 604 investigations

d. Revocation

Approval of an orphan petition can be revoked even after approval if the Service becomes aware of information that would have resulted in denial

at the time of revocation. None of the materials I have seen suggest that any visas from Cambodia issue to children who had already entered the United States were revoked.

3. Convention visas

U.S. immigration laws have already been amended to provide that when the United States ratifies the Hague Convention, children adopted from Convention countries will be eligible for a third category of visas. Proposed regulations implementing this type of visa have not yet been published, so the details are not yet available. However, the statutory provisions, though similar to the orphan visa provisions, would make it somewhat easier to obtain a Convention visa in two ways.

(1) The statute would permit adoption even if a child has two living parents, if both are found to be incapable of providing proper care, a provision that is not available to obtain an orphan visa.

(2) A sole surviving parent (which includes an out-of-wedlock mother if the father has consented) may consent to the adoption without the necessity of proving that either parent is incapable of supporting the child.

B. State Law

III. International Law

A. Convention on the Rights of the Child (CRC) (1989)

The CRC, reflecting the sentiments of an earlier U.N. Declaration regarding international adoption (1986), taking a somewhat guarded approach to the institution. It requires states parties to:

- recognize that international adoption is an alternative only when a child cannot be placed in a foster or adoptive family or be cared for in another suitable manner in the child's country of origin(Article 21);
- ensure that the best interests of the child are the paramount consideration;
- take appropriate measures to ensure that inter-country adoption does not result in improper financial gain (Article 21);
- take appropriate action to prevent the sale, trafficking, or abduction of children in any form (Article 35);
- conduct international adoptions with the safeguards used for domestic adoptions (Article 21);
- ensure competent authorities have determined that adoption is permissible and, where required, that informed consents have been given (Article 21).
- all placements of children, including adoption, should be made considering the desirability of continuity in the child's upbringing and ethnic, religious, cultural, and linguistic background (Article 20)
- call for further treaties to ensure that international placements were carried out by competent authorities (Article 21)

B. The Hague Intercountry Adoption Convention,

1. Scope

- now has 64 contracting members
- The United States has signed the Convention and the U.S. Senate gave its advice and consent in 2000. Implementing legislation, the Intercountry Adoption Act, was passed in 2000, and proposed regulations by the Department of State were published in 2003. Nevertheless, the regulations have not yet been published in final form, and recent estimates are that it will be at least 2006 before the United States is ready to ratify.
- provisions will only apply when both the receiving nation and the country of origin is also a party

2. Comparison with CRC regarding appropriate use of adoption.

See Alexandra Maravel, Dynamics of Children's Rights through Legal Strata, 6 Transnat'l L. & Contemp. Probs. 309 (1996); Richard Carlson, The Emerging Law of Intercountry Adoption: An Analysis of the Hague conference on Intercountry Adoption, 30 Tulsa L. J. 243, 255 (1994).

3. Provisions relevant to trafficking

- The prevention of trafficking is one of the specific goals of the Convention set forth in Article 1.
- Article 4 specifically provides that consents must be voluntary, counseled, in writing, and not induced by payment or compensation of any kind.
Moreover, depending on the age and maturity of the child, consideration must be given to the child's wishes and, when required by the law of the country of origin, the child's voluntary consent must be obtained in writing, and not induced by payment or compensation.
- Article 29 specifically prohibits contact between prospective adoptive parents and a child's parents or caretakers until after a governmental agency, accredited agency, or approved body in the country of origin has established that a child is adoptable, determined that intercountry adoption is in the best interests of the child, and obtained the necessary consents.
- Article 32 directly forbids the acquisition of improper financial gain through international adoption. It further prohibits that directors and staff working in international adoption from deriving unreasonably high remuneration.
The Hague attempts to address this weakness by requiring in Article 4 that governmental authorities:
 - establish a child is adoptable;
 - consider placement options in the country of origin and determine that intercountry adoption is in the child's best interests;
 - ensure that the necessary consents have been obtained; and

- ensure that the consents are proper and have not been induced by payment.

Either governmental authorities or accredited agencies or individuals may then prepare a report with information about the child's background.

4. Accreditation Process under U.S. Intercountry Adoption Act

Accredited agencies must be:

- nonprofit adoption agencies licensed by the states in which they operate;
- directed and staffed by qualified persons;
- follow certain ethical standards;
- trained or experienced intercountry adoption;
- subject to supervision by governmental authorities regarding their composition, operation, and financial supervision.

The United States permits approved persons to perform adoption services. They must meet the above requirements, except that they can operate for profit and do not have to be licensed by the state to provide adoption services.

Proposed regulations indicate that the accreditation and approval process will scrutinize the fees and compensation of all directors and staff of both agencies and approved bodies, and mandate that the agency or person may not compensate any individual with incentive fees or contingent fees for each child placed.(22 C.F.R. § 96.34) Agencies or approved persons must show the accrediting entity that they undergo independent audit (22 C.F.R. § 96.33), and accrediting entities review complaints filed against the agencies or bodies.

Proposed reg 22 C.F.R. § 96.36 requires agencies and approved persons to prohibit its employees and agents from giving money or other consideration as payment to parents or others for adoption release, and must show they have both written policies and training in place to reinforce this policy. Information regarding fees and expenses must be provided to prospective adoptive parents before any adoption services are provided. Federal law requires that accreditation be renewed every 3-5 years, 42 U.S.C. 14923, and the proposed 22 C.F.R. § 96.40 suggests that accreditation would be renewed every four years, 22 C.F.R. §96.60.

The proposed regulations also suggest that entities will be monitored annually, and also create mechanisms to review and respond to complaints.

5. Civil and Criminal Penalties for Trafficking 42 U.S.C. § 14944.

C. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography

- Entered into force on January 18, 2002
- 89 states parties, including the United States and Cambodia
- requires contracting states to criminalize the sale of children and specifically the improper inducement of consent for adoption of a child, and to establish liability for such acts, and to include such offences in its extradition treaties

- requires contracting states to take all appropriate legal and administrative measures to ensure that all persons involved with adoptions act in conformity with applicable legal instruments
- requires contracting states to adopt laws and programs to deter child-selling, and to report to the Committee on the Rights of the Child regarding implementation

D. Countries of Origin Suspension of Operations.