

**STATEMENT**

**OF**

**JAMES W. ZIGLAR**

**COMMISSIONER  
IMMIGRATION AND NATURALIZATION SERVICE  
DEPARTMENT OF JUSTICE**

**BEFORE THE**

**HOUSE COMMITTEE ON INTERNATIONAL RELATIONS**

**REGARDING  
A HEARING ON**

**INTERNATIONAL ADOPTIONS**

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Mr. Chairman and Members of the Committee:

I welcome this opportunity to share with you my experience and objectives with respect to improving the Immigration and Naturalization Service's (INS) critical role in the international adoption arena. For those United States citizens who choose to open their hearts and homes to children from abroad, the INS shares with the Department of State responsibility for adjudicating orphan petitions and enabling a child's immigration to America.

The circumstances that arose in connection with the adoption of children from Cambodia and Vietnam in recent months thrust the INS into this issue early on in my tenure. The experience brings into sharp focus the many aspects of INS' global responsibilities: the interaction between our domestic and overseas offices and the Department of State, the interaction between U.S. immigration laws and the laws of the foreign sending countries, and the direct impact our work has on the hopes and dreams of United States citizens.

I am committed to working with you to improve INS' contribution to international adoptions. Along with the pressing security concerns of the day, I have made international adoptions a top priority for the INS. One of my first initiatives was to create a special Adoptions Task Force with clear and immediate objectives that I will outline in detail later. The Task Force was created to undertake a special humanitarian initiative to review certain adoption cases in Cambodia. The Task Force has also undertaken a comprehensive review of the existing INS structure for dealing with international adoptions.

My purpose here today is to share with you the INS' role in international adoptions, and more importantly, what INS plans to do to improve the international adoption process. First, I will summarize the context in which international adoptions are currently taking place. Then I will discuss with you how the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoptions (the Hague Convention), and the Inter-country Adoptions Act of 2000 (IAA) are changing -- for the better -- how the United States Government processes international adoptions. Finally, because the IAA will not be implemented until 2004 and is not designed to change how we deal with countries which have not signed the Hague Convention, I will outline the additional measures I have asked the Adoptions Task Force to implement as soon as possible. These include both a special service to assist Americans adopting in certain more difficult countries, as well as short and long term process improvement measures.

### **Largely Positive Context For International Adoptions**

The suspension of orphan visa processing in Cambodia was implemented for good reason: there are serious deficiencies in the Cambodian legal framework on adoptions, and there are very real human trafficking concerns. However, the controversies that have arisen recently in connection with Cambodia and Vietnam must not make us lose sight of the largely positive context in which we do our work. Although in need of improvement, the current procedures that are in place have worked for thousands of U.S. families each year. The majority of cases have happy endings.

### **INS' responsibilities**

#### ***To the child***

The INS' determination that a child is an orphan as defined under the Immigration and Nationality Act (INA), and is, therefore, eligible for immigration to the United States, is among the most sensitive adjudications we perform. In performing this task, the INS must bring to its work a core commitment to protect the interests of the child, which is at the heart of the process. Under the current statutory framework, we are obligated to make a determination as to whether or not this child is indeed an orphan -- that is, a child without parents, as defined under the INA, and to uphold the laws that have been created to protect children in this process.

## ***To the parents***

We also have a weighty responsibility to the American citizens -- the prospective adoptive parents -- who have invested their hearts, and often considerable resources, in this endeavor. The immigration process associated with adoption should not diminish the joys of providing a home to a child, but at the same time there are laws and procedures that must be honored. The INS must work to ensure that our efforts in upholding the law complement the commendable spirit that is at the core of the decision to open one's heart and home to a child.

## **International Context**

Another factor that makes the international adoption process complex is that foreign countries in which parents seek to adopt are often characterized by extreme poverty and the accompanying societal uncertainties and pressures. These same countries may be struggling to establish the sound legal frameworks and well regulated adoption processes which would bring integrity to the intercountry adoption process and which make compliance with our immigration laws simpler. Also, even in relatively well-developed countries with strong legal systems, the legal adoption requirements can vary from country to country, even as they vary from state to state here, making the challenge of cooperation all the more complex and important.

## **INS' Other Partners**

Furthermore, INS' role in adjudicating international adoptions depends -- perhaps more than in any other area -- on extensive coordination between INS' domestic and overseas operations, and with the Department of State, as well as numerous state and private adoption agencies. The immigration and adoption process most often begins in the United States with INS' adjudication of the initial Form I-600A (Application for Advance Processing of Orphan Petition). However, the documentation supporting it -- home studies and background checks -- must come from domestic social service entities and law enforcement agencies.

Another unique facet of adoptions is that the INS shares its responsibilities for adjudicating cases overseas with the Department of State. INS officers stationed overseas are responsible for adjudicating petitions in the 37 countries in which they are present. In the remaining countries throughout the world, State Department officers have the same responsibility.<sup>1</sup> In those countries, INS only sees those petitions if the Department of State requests our assistance in cases which the Department of State finds are not "clearly approvable," as was the case in Cambodia. United States law enforcement officers working in this field face many difficult challenges. When the INS or Department of State determines that an investigation is necessary, the investigation may involve working with one another, with foreign officials tasked with preventing child buying and human trafficking, and with other governmental and non-governmental organizations in the foreign sending state.

## **The Promise of the IAA and Hague Convention**

It may seem like a daunting task to improve the process. However, as Assistant Secretary Mary Ryan has just outlined to you today, the Hague Convention and

Intercountry Adoptions Act will provide some clear guidance and direction. I will talk a bit about how elements of the Hague Convention will affect how INS processes international adoptions, and then tell you how the Adoptions Task Force is looking to borrow from the Hague Convention

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<sup>1</sup> 8 CFR §204.3 (k)(1). "An I-604 investigation must be completed in every orphan case. The investigation must be completed by a consular officer except when the petition is properly filed at a Service office overseas, in which case it must be completed by a Service officer."

and from the best practices in the field to make important changes and improvements to our process in the shorter term, and in countries where the Hague Convention will not apply.

As Assistant Secretary Ryan explained, one of the most important improvements to international adoptions, implementation of the Hague Convention through the Inter-country Adoption Act, is already underway. The Hague Convention and the IAA were created in response to precisely the kinds of concerns that gave rise to the suspension of adoptions in Cambodia: concerns about exploitation and child buying, the insidious activities of criminal elements who exploit the adoption process for profit, and problems related to countries whose laws are vulnerable because of weak controls. Although the Hague Convention and the IAA will not, by their express terms, apply to orphan petitions filed for children from non-Hague Convention countries, I believe that the Convention and the Act will provide models that can help improve the processing of non-Hague Convention orphan cases.

As Assistant Secretary Ryan has outlined for you, the process for implementing the IAA to integrate the mandates of the Hague Convention is on track and is in the Department of State's hands as they are the lead agency. INS will continue to support the Department of State in establishing its new role as the Hague-designated U.S. "Central Authority" in the intercountry adoption process.

The Hague Convention and the IAA will help us enormously. They will require that the child's eligibility to immigrate be determined before either adoption or placement for adoption may occur in countries party to the Hague. This will be a significant departure from the current regulatory process that allows a child to be adopted before eligibility to immigrate to the U.S. is established. The Hague Convention will also significantly expand the universe of children who are available for adoption and who can immigrate to the United States. It will not be necessary for each child adopted from a Hague Convention country to be an orphan, as currently defined in the law. In this respect, it will ease some of the difficulties inherent in our adjudications. In Hague Convention countries, the INS will also be able to rely on a Certificate of Final Adoption or Custody issued by the foreign country's designated "Central Authority" as evidence of relationship between the child and the adoptive parent(s). This certificate, together with the original adoption decree, is evidence that the child is eligible to immigrate to the United States.

The Hague Convention also provides for counseling for all prospective adoptive parents. The accreditation process for adoption service agencies will help ensure that prospective adoptive parents and our immigration officers know which agencies are committed to meeting certain professional standards. Requirements for transparency in fees charged by accredited agencies can help deter child-buying and inappropriately high fees. Changes like these will assist prospective adoptive parents and our adjudicators in making the most informed, balanced decisions possible.

The IAA does not, however, end our responsibilities to be diligent in protecting children, and to ensure that the availability of processes for overseas adoption do not lead to exploitation of children, birth parents, and adoptive parents. And we would be wrong not to anticipate that there will be new dilemmas and challenges that we must tackle creatively, particularly during the early stages of implementation. But it is fair to say that it is going to help.

However, these changes are not scheduled to take place until 2004, and some of the very poor and underdeveloped countries which do not have fully transparent processes and with which the INS and the Department of State are struggling to make fair determinations today are not signatory to the Hague Convention. For these reasons, I asked the Adoptions Task Force, in their review of our current policies and regulations, to recommend steps that could move us as quickly as we can towards processes for all countries that are more consistent with the Hague Convention. The final portion of my testimony today will outline the progress that the Adoptions Task Force has made so far, and where we are headed.

## **The Adoptions Task Force -- Working Methods**

The Task Force has been working to achieve two important goals. The first goal is to provide safeguards for American adoptive parents similar to the safeguards provided under the Hague Convention and the IAA. I will call this the "adjudicate orphan status first" initiative. The second goal is one of process improvement, including better communication, training, field guidance, and targeted regulatory changes. I think you will be as pleased as I am with the practical but high-yield changes and improvements we are in the process of implementing.

To make certain that the INS takes every possible measure to try and prevent another situation like the one in Cambodia and Vietnam that occurred in the past few months, I appointed a Task Force comprised of some of our best, most experienced managers and field staff to identify and address key challenges as quickly and thoroughly as possible. The Adoptions Task Force has already embarked on the first of a two-part consultative process with governmental, non-governmental, and community based stakeholders. This process will identify service and enforcement issues of concern and will ensure that stakeholders have the opportunity to raise questions, provide information, and propose solutions. Based on concerns raised by governmental and non-governmental stakeholders, the Adoptions Task Force conducted a series of intensive internal reviews with experienced INS and State Department officers to respond to each of the issues raised in the most appropriate way.

In addition to the general proposals which I will outline to you today, we will conduct another round of consultations with stakeholders to let them know what we are proposing, and outline our short and long term strategies for improving the process. Finally, we will hold an "Adoptions Summit" during the week of June 17, 2002, bringing together key INS and State Department personnel from domestic and overseas posts to provide intensive training. The training will ensure that government officers involved in adjudicating adoption cases and investigations relating to potential problems with home studies and incidents of child-buying and trafficking, will be able to implement policies and guidance in a uniform and efficient manner. A final presentation of changes to the adoptions process will also be presented to congressional staff, NGOs, and community based stakeholders.

### **Introducing "Hague-consistent" Safeguards for American Adoptive Parents: The "Adjudicate Orphan Status First" Initiative**

Of all the changes the Task Force will address, the single most important operational improvement will be to introduce safeguards similar to the Hague Convention process for American adoptive parents as quickly as possible in certain more problematic countries. We are calling this the "adjudicate orphan status first" initiative.

The most serious problem with international adoptions is that in many countries, the process by which governments decide that birth parents are no longer providing care for their child and that the child is available for intercountry adoption is not always transparent.

As a consequence, some American prospective adoptive parents have experienced the heartbreaking situation in which they have traveled abroad and adopted a child, only to discover that the child does not meet the orphan definition and cannot immediately immigrate to the United States. For example, sometimes a foreign country allows Americans to adopt a child who is not an orphan because their laws are different than ours. Sometimes, particularly in poor and underdeveloped countries, unregulated and unscrupulous agents and facilitators take advantage of inadequate infrastructure and safeguards to lead American prospective adoptive parents to believe a particular child is an orphan when a professional review of the paperwork reveals serious problems and irregularities.

As I mentioned before, under the Hague Convention, signatory governments will be responsible for certifying that a child is eligible to immigrate under the laws of the prospective adoptive parents' country before they allow the adoption to take place. But prior to the Hague Convention being implemented and for non-signatory states, we are exploring ways to offer a voluntary service to prospective adoptive parents who are thinking about adopting in certain countries, in essence, to adjudicate orphan first. We are in the process of developing this process with the Department of State, and look forward to being in a position to share the details on this proposal shortly.

### ***Improving the Adoptions Process***

While exploring a voluntary "adjudicate orphan status first" service is the single most important initiative we have undertaken, the Task Force is also seeking to improve the process in three additional ways. The first has been to seek to improve communications with congressional staff and non-governmental stakeholders. The second is to improve internal processes, through documenting existing procedures, identifying best practices, and providing guidance in the form of field manuals, training materials, worksheets, and checklists. The third is to identify and begin working on longer-term goals, including centralized coordination within INS, and procedures and regulatory changes that require some time to implement.

### ***Communication***

We will do our best to ensure that clear guidance is provided to prospective parents, adoptions agencies, and other stakeholders on how the process works; what to expect at each stage in the adoption process; and the legal requirements that must be met for a child to immigrate to the United States in an international adoption. We continue to seek to explain to prospective parents that adoption and immigration are separate processes, and that, for example, fulfilling the adoption requirements of a foreign sending country does not necessarily mean that American immigration requirements have been met. We encourage other stakeholders, such as adoption agencies, to meet their own responsibilities in this regard. We will also continue to encourage domestic INS offices, and overseas posts, to communicate, openly and regularly with all the stakeholders in the adoptions process, including adoption agencies and prospective adoptive parents. As always, we seek to ensure that the latest information is available on the INS and State Department web-sites, so that everyone involved in the process has access to the best and most recent information available.

### ***Process Improvement – Short Term Initiatives***

The Adoptions Task Force, with assistance from the State Department, will be organizing a week-long training for new and experienced adoptions adjudicators working in domestic and overseas locations. A comprehensive range of updated and new materials will be introduced through this training, including policy guidance, training modules, worksheets, checklists, flow charts, and sample "best practices" standard letters and other communication techniques. The training will use real cases to walk our officers through the best techniques for working with prospective adoptive parents, evaluating evidence, and communicating their decisions. While much of the material developed for the training was obtained by identifying and documenting existing best practices, we have also developed some guidance in areas where policies needed to be developed and articulated, such as for conducting investigations involving possible child-buying, smuggling or trafficking.

This training, which encourages the use of standardized adjudication tools whenever possible, will provide more detailed guidance on the application of legal definitions and standards, and new guidance on when and how to conduct investigations, will improve the consistency and quality of our adjudications, and will provide our officers with a more consistent understanding on responsibilities under the regulations. We will also continue to encourage an open, constructive

cooperation with prospective adoptive parents, which will help to ensure that the process is transparent and user-friendly.

### ***Process Improvement -- Long Term Initiatives***

I recognize that the task we have set for ourselves -- to introduce an important new pilot program to assist prospective adoptive parents, while at the same time improving our existing guidance and training tools and developing new ones -- is very ambitious. But I believe that we can do it. The Adoptions Task Force has informed me that their initiative has been met with overwhelming support and enthusiasm from our field staff, who have been eager to donate their time to identifying best practices, developing guidance to improve quality and consistency, and even raising their own ideas about areas where they would like to receive additional guidance and suggested regulatory changes. This enthusiastic support has enabled the Adoptions Task Force to meet its ambitious goals.

Realistically, however, many of the processes begun by the Task Force will need to be shepherded through complicated clearance procedures, regulatory changes, automation updates and structural changes. For that reason, I am pleased to announce that we have identified a senior INS manager with extensive experience both in adjudications and overseas processes who will play a coordinating, policy development and oversight role for INS.

While these plans for longer-term changes will continue to develop, we have already identified some important priorities. The first, as we noted above, is to work closely with the State Department to introduce provisions consistent with the process envisioned in the Hague Convention and the IAA into our regulations for adoptions in non-signatory states, while encouraging all governments to sign the Convention or adopt comparable measures in their domestic law. The Adoptions Task Force is already in the process of drafting language for proposed regulatory changes for this and a number of other areas to bring our regulations into line with the IAA and anti-trafficking initiatives that were introduced after the regulations were last amended. Completion and clearance of standard operating procedures, an automated database to track and process cases, and a centralized authority within INS are among the other initial recommendations made by the Task Force for more careful consideration in the coming months. As was the case with the Adoptions Task Force, these longer-term initiatives will include extensive, open consultation with all governmental and non-governmental stakeholders in the process.

### **Conclusion: Caution That The Process Will Never Be Simple**

Improving the immigration determinations for which INS is responsible has been a matter of the highest priority for the Service since I have become Commissioner. I believe that we have a plan that will take us in the right direction. Yet I must introduce a note of caution. We cannot lose sight of the fact that many international adoptions take place in the context of some of the poorest and most unstable and underdeveloped nations in the world. Even with the significant improvements to our process that will be introduced by the Adoptions Task Force, the introduction of the IAA, and some of our longer-term regulatory and structural improvements, we will still face a complex and difficult situation in many of the countries from which Americans seek to adopt. Unregulated and unscrupulous agents and facilitators, including those that operate on the Internet, will continue, to try to insinuate themselves in the process, and to exploit the necessarily complex layers of interaction between agencies of different governments. We will need to continue to be vigilant that American citizens and the U.S. government do not unintentionally contribute to a situation where baby selling and buying can occur.

In conclusion, while I am realistic about the challenges we face, I am still confident that we can make considerable progress in a relatively short time in improving the adoptions process. By focusing on our main goals -- a special initiative to "adjudicate orphan status first" to assist American prospective adoptive parents; better communication; clear field guidance and training;

close coordination with all of our partners; and a longer-term, centrally coordinated regulatory structure to improve operations and introduce international standards -- we can achieve something all of our stakeholders will appreciate and benefit from. This concludes my testimony and I look forward to responding to any questions that you may have.