



# U.S. Citizenship and Immigration Services

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**STATEMENT**

**OF**

**ROBERT DIVINE  
ACTING DEPUTY DIRECTOR  
U.S. CITIZENSHIP AND IMMIGRATION SERVICES  
U.S. DEPARTMENT OF HOMELAND SECURITY**

**REGARDING A HEARING ON**

**“Hearing on Intercountry Adoption”**

**BEFORE THE**

**SUBCOMMITTEE ON EAST ASIAN AND PACIFIC AFFAIRS  
SENATE COMMITTEE ON FOREIGN RELATIONS**

**June 8, 2006**

**2:30 PM**

**419 Dirksen Senate Office Building**

Madame Chairwoman and Members of the Subcommittee:

My name is Robert Divine and I am the Acting Deputy Director of U.S. Citizenship and Immigration Services (USCIS). I am honored to have this opportunity to address the Subcommittee on intercountry adoptions. The employees of USCIS are proud of the important role they play in assisting U.S. citizens seeking to adopt children from other countries. As a result of their collective efforts, more than 200,000 foreign-born children over the past decade are living with their adoptive families in the United States.

I also want to take this opportunity to publicly thank our colleagues at the Department of State for their ongoing partnership with USCIS as we assist U.S. citizens in opening their hearts and homes to children from other countries. Today my colleagues from the Department of State and I will share with you the many achievements and challenges we have faced in the past year. I will also address particular issues concerning intercountry adoption in China, Indonesia, Vietnam, Cambodia, and the implementation of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Convention).

## **Overview**

In recent years, the United States has seen a steady increase in the number of children from other countries adopted by U.S. citizens – from 19,087 children in fiscal year 2001 to more than 22,700 children in fiscal year 2005.<sup>1</sup> USCIS remains committed to improving and streamlining its processes, while strengthening the protection of children in the system.

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<sup>1</sup> The following table shows five years of data on the number of children from other countries adopted by U.S. citizens:

## Recent Achievements in Intercountry Adoption

USCIS understands the critical role it plays in the process of intercountry adoptions. There are several vehicles USCIS uses in its efforts to assist prospective adoptive parents and children through the intercountry adoption process. One such vehicle is the Child Citizenship Act (CCA).

### *Child Citizenship Act Program*

The Child Citizenship Act (CCA), which became effective on February 27, 2001, amended section 320 of the Immigration and Nationality Act (INA) by providing U.S. citizenship to certain foreign-born children. Under the CCA, children with a full and final adoption abroad who immigrate to the United States with a U.S. citizen parent automatically acquire U.S. citizenship upon entry. Children who emigrate and have their adoption finalized in the United States become citizens at the time of the final U.S.- adoption. A “full and final adoption” exists, for immigration purposes, if (1) the adoptive parents completed the adoption abroad according to the laws of the child’s country, so that the adoptive parents are now the child’s legal parents for all purposes, and (2) BOTH parents saw the child either before or during the adoption proceeding abroad. The child receives an “IR-3” immigrant visa, if both of these requirements are met. If not, then the child receives an “IR-4” immigrant visa. For example, if only one parent saw the child, but the foreign proceeding was an actual adoption proceeding, an IR-4 visa would be the

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<b>Fiscal Year (Oct. 1 – Sept. 30)</b>	<b>Immigrants-Orphans Adopted by U.S. Citizens</b>
2005	22,710
2004	22,911
2003	21,320
2002	21,100
2001	19,087
2000	18,120

*Source: Office of Immigration Statistics, Yearbook of Immigration Statistics (data includes 1) orphans adopted abroad, admitted to US (IR3s), 2) orphans adopted abroad, adjustments in the US (IR8s), 3) orphans to be adopted, admitted to the US (IR4s), and 4) orphans to be adopted, adjustments in the US (IR9s).*

proper visa. An IR-4 visa would also be the proper visa if both parents saw the child, but the foreign proceeding was a guardianship or custody proceeding, rather than an actual adoption proceeding. For a child who enters with an IR-4 visa, the parents must then adopt the child in the United States, if there was no adoption abroad. If there was an adoption abroad, but the parents did not both meet the child before or during the adoption, then the parents must establish that the foreign adoption is recognized under the law of their home State. This recognition may be established either by obtaining a formal court order recognizing the adoption (sometimes called “re-adoption”) or by establishing that the home State’s law recognized the foreign adoption without the need for a formal court proceeding.

If a citizen believes that his or her adopted child acquired citizenship under the CCA, the parent may file an application for a certificate of citizenship. In addition to this standard practice, however, USCIS also implemented the requirements of the CCA by creating a special program that processes citizenship for children adopted in other countries. The program began on January 1, 2004, and is located in the USCIS Buffalo, New York District Office. Through the program, USCIS-Buffalo receives and reviews all immigrant visas for children admitted to the United States who were adopted abroad (that is, those issued IR-3 visas), and issues a certificate of citizenship to those children who meet the requirements under section 320 for automatic acquisition of citizenship. No formal application for a certificate of citizenship is required, under this special program, if the child meets these requirements.

To date, the CCA Program has been a success. From its inception on January 1, 2004 to May 30, 2006 the program has:

- Received and reviewed 37,617 visas for children admitted with IR-3 visas, and
- Produced 37,185 certificates of citizenship for adopted children who were found to have acquired citizenship under section 320.

It is important to note that just 34 days, on average, elapse from the time the child enters the United States with an IR-3 immigrant visa to the time a certificate of citizenship is produced for the adopted child. While proud of this accomplishment, USCIS continues to work hard to maintain and improve the timeliness of this program.

#### *Intercountry Adoptions Working Group*

In March 2006, I established and chartered the Intercountry Adoptions Working Group consisting of representatives of various components within USCIS that play a role in intercountry adoption, as well as representatives from the Department of State's Office of Children's Issues and Consular Affairs. The working group is responsible for addressing three issues:

- Near-term improvements and streamlining of USCIS' current intercountry adoption process;
- Long-term redesign of USCIS' intercountry adoption process to strengthen customer service and integrity; and
- Promulgation of USCIS regulations, and potential other changes, necessary to implement the Hague Convention

I believe we are already beginning to see progress from the efforts of this working group, particularly in the area of coordination with the Department of State. For example, as a result of

increased communication, USCIS and the Department of State have agreed to provide joint quarterly updates to the Congressional Coalition on Adoption Institute concerning implementation of the Hague Convention, and on other pressing issues facing intercountry adoption. The first of these updates is scheduled for June 12<sup>th</sup>.

## **Country Updates**

Because of this committee's and the public's interest in intercountry adoption in China, Indonesia, Vietnam, and Cambodia, it is important to highlight the various processes and issues with intercountry adoption in these countries.

### *China*

Of the countries that currently participate with us in intercountry adoptions, China generally is viewed as the most efficient, predictable and transparent of all countries. In terms of U.S. involvement in this process, much of the credit for this positive reputation goes to the Adopted Children's Immigrant Visa Unit (ACIVU), a sub-unit of Department of State's Consular Section in Guangzhou, which is supported by USCIS overseas personnel. ACIVU works closely with the China Center of Adoption Affairs (CCAA), the Chinese government authority that oversees foreign adoptions to ensure an effective intercountry adoption process.

The Guangzhou consulate adjudicates orphan petitions and conducts orphan investigations for all children adopted by U.S. citizens in China. More immigrant visas for adopted children are processed in Guangzhou than in any other post in the world. In fiscal year (FY) 2005, Guangzhou issued 7,906 visas to adopted children immigrating to the United States.

According to information posted on CCAA's web site, the current wait time for the referral of a child for adoption is about 11 months – up from about 8 months only several months ago. CCAA has attributed this increase in wait time to three factors: 1) an increase in intercountry applications, 2) a finite number of children, and 3) an increase in domestic adoptions. CCAA has not speculated about whether wait times will continue to rise in the future. Rather, they stress that their policies are transparent, and that they do not impose quotas on intercountry adoptions. Given this situation, the Intercountry Adoptions Working Group, in conjunction with partners at Department of State, has begun to examine the adoption processes to identify opportunities for streamlining that will reduce the impact on U.S. citizens of longer CCAA processing times.

### *Indonesia*

Indonesia has strict guidelines and laws that prospective adoptive parents must meet, including such requirements as being a resident in Indonesia for at least 2 years with a permit issued by the local authorities and a letter from the U.S. Embassy in Jakarta (a statement of domicile).

Indonesian law stipulates that an adoptive child must be of the same religion as the adoptive parents; where the religion of the child's natural parents is not known, the child will be deemed to be Muslim. These are only some of the many requirements that prospective adoptive parent must fulfill and follow, but I will defer to my colleague from the Department of State to address more fully the current situation in Indonesia.

## *Vietnam*

On June 21, 2005, the United States and Vietnam signed a bilateral agreement to resume intercountry adoptions – ending a two-and-one-half-year moratorium. Under the agreement, which entered into force on September 1, 2005, the United States and Vietnam recognized:

- Intercountry adoption is an appropriate measure to provide children with a permanent family when an appropriate family cannot be found in their country of origin
- Both countries needed to take appropriate measures under their respective laws to prevent and deal with actions of adoption abuse.
- Both countries share responsibility for implementing measures to prevent improper financial or other gain as a result of working for and receiving orphans, and to penalize such practices.

The Vietnamese Department of International Adoptions (DIA), within the Department of Justice, is the Vietnamese government entity responsible for overseeing and authorizing all adoptions by U.S. citizens. The goal is to eliminate the possibility of contact between the adopting and biological parents, which could allow for the possibility of child-selling.

Since the agreement took force on September 1, 2005, the U.S. Government has received 22 requests for immigrant visas in adoption cases from U.S. citizens. On January 25, 2006, the U.S. Embassy in Hanoi issued the first immigrant visa to a Vietnamese child adopted by a U.S. family under the agreement. USCIS is extremely pleased with these developments and, with Department



of State, will continue to monitor the progress of safe and well-maintained intercountry adoption in Vietnam.

### *Cambodia*

On December 15, 2001, the then-Immigration and Naturalization Service (INS) imposed a suspension on intercountry adoptions from Cambodia due to evidence of baby selling and corruption in the adoption process. A joint State Department-INS Task Force was then formed to process all cases of American citizens whose Form I-600A (Application for Advance Processing of Orphan Petition) to adopt an orphan from Cambodia had been approved prior to December 31, 2001. Over the next three years, this joint Task Force, working with the Royal Government of Cambodia, processed over 400 cases. The Task Force completed its mission and was disbanded on August 31, 2004.

Currently, with the dissolution of the Joint Task Force, no further cases involving orphans from Cambodia will be processed by either the Department of State or by USCIS. This means that there will be no processing of orphan petitions (Form I-600) and/or immigrant visa applications for Cambodian orphans until the suspension on intercountry adoptions from Cambodia is lifted.

The U.S. Government stands ready to provide guidance to the Cambodian government in both establishing an improved child welfare system and enacting and implementing Cambodia's pending adoption legislation. We believe that this plan will yield positive results, once the Cambodian government begins to move forward on this issue. To that end, the U.S. Embassy in Phnom Penh will continue to remain engaged with both the Cambodian government and

UNICEF. In addition, USCIS has offered to provide technical assistance in any way that might be helpful as Cambodia looks to move forward on these issues. I defer to my colleagues from Department of State to discuss in more detail the current situation with Cambodia.

**The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Convention)**

In reviewing intercountry adoptions it is necessary to discuss the Hague Convention. The Hague Convention is a multilateral treaty that was adopted on May 29, 1993. The Convention covers the adoption of a child who habitually resides in one Convention country by adoptive parents who habitually reside in another Convention country, when the child is going to immigrate to the adoptive parents' country as a result of, or for the purpose of, the adoption. The Convention establishes certain internationally agreed-upon minimum norms and procedures. The goal of the Hague Convention is to protect the children, birth parents and adoptive parents involved in intercountry adoptions and to prevent abuses.

The United States signed the Hague Convention on March 31, 1994, signaling its intent to proceed with efforts to ratify the Convention. In September 2000, the Senate consented to the President's ratification of the Convention, but the Senate conditioned this consent on the adoption of the laws and regulations necessary to carry out the principles of the Convention.

On October 6, 2000, President Clinton signed the Intercountry Adoption Act to, among other things, establish the domestic legal framework for implementing the requirements of the Hague Convention. Since that time, efforts have been under way to issue Federal regulations to set forth:

- The requirements entities must meet to qualify for designation to accredit or approve adoption service providers;
- The standards agencies and individuals must meet to become Hague Convention accredited or approved as adoption service providers; and
- The procedures for adoptions to and from the United States.

I will address the third point – the procedures for U.S. citizens to adopt children from “Hague” countries, as this is where USCIS has responsibility. Under the Intercountry Adoption Act, USCIS is responsible for regulations addressing:

- Determination of the suitability of a prospective adoptive parent to adopt a child from another Hague Country; and
- Adjudication of a petition to classify a child as a “Hague Child.”

USCIS is currently working to implement these two responsibilities, and is consulting closely with the Department of State on the overall implementation framework and timeline.

That said I would like to take this opportunity to address the addition of the ICARE Act to S 2611, the Comprehensive Immigration Reform Act of 2006, recently passed by the Senate.

While DHS shares the goals of the drafters to improve and streamline the intercountry adoption process for U.S. citizens while protecting the best interest of the children, we are concerned that introduction of such dramatic changes into the intercountry adoption process while the U.S. Government is in the midst of implementing the Intercountry Adoption Act could significantly delay ratification of the Hague Convention. In addition, the citizenship provision of the ICARE

Act, which provides for automatic acquisition of citizenship by adopted children upon a full and final adoption in a foreign country, is particularly troubling. It eliminates an important “check” from the U.S. Government process for recognizing acquisition of citizenship by adopted children - the admission of children to the United States for permanent residence. This important step in the process allows the U.S. Government to review foreign adoptions and refuse to recognize them for immigration purposes when fraud, public welfare or other particular issues are present. Without this step, foreign governments would have a larger role in the decisions about which adopted children automatically acquire U.S. citizenship.

Rather than risk a delay to ratification of the Hague Convention, the ICARE Act, particularly the U.S. citizenship portion, should be reconsidered at this time. By waiting until after implementation of the Intercountry Adoption Act and ratification of the Hague Convention, we will have an opportunity to fully assess the reforms necessary to strengthen the intercountry adoption process in the United States.

## **Conclusion**

As the committee can see, intercountry adoptions require a multifaceted and complex process. USCIS, in partnership with the Department of State, is working first and foremost to protect children, birth parents and adoptive parents involved in the intercountry adoptions and to make the process as well maintained and efficient as possible. Thank you again for the opportunity to speak with you on this important subject. I am happy to answer any questions you may have.