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**CHILD ADOPTIONS IN VIETNAM****February 15, 2008**

The question of adoptions is so complex, and so emotional, that before I answer your specific question I need to explain the overall U.S. approach to adoptions and the history of the U.S. adoptions in Vietnam. For several years American citizens were not able to adopt children from Vietnam, but back in the year 2005 we reached an agreement and since then hundreds of Vietnamese children have been adopted by American citizen parents. This is another way that we cement the bonds, the strong and significant and growing bonds between our two countries.

The agreement that we reached in 2005 is now up for renewal, and we need to be sure that the process of adopting children in this country is transparent, and also provides the best possible protection for the children, for their biological parents, and for the American citizens who might adopt them. We must be absolutely positive that any child who is going to be adopted or who is adopted by an American citizen is in fact eligible to be adopted, is in fact an orphan. We must be very very certain that that program is as free from any kind of corruption or misunderstanding about a child's ability to be adopted.

When we speak with any country in the world about adoptions, it is always informed by a special convention, the Hague Convention on Inter-Country Adoptions. Part of what that convention says is that domestic adoptions are always the first option. If a child can be adopted in their own country, then that is the preferred option. If in fact adoption within their own country is not available for whatever reason, then of course we would like to work with that country to build the most transparent process possible to see adoptions occur.

I want to be very clear about this. What is most important for us is that here in Vietnam as well as in other countries around the world, what is most important for us is that if a child needs a family and a home, we would like to be able to provide that. We're not here because parents want children, we are here because children need families. That's a very important difference. This is about taking care of children.

Alleged child-buying is a legitimate concern of ours as well as a number of ministries of the government of Vietnam. They recognize the need for new

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legislation about adoptions, both domestic and international, so that there is clarity on the law, so that there are in fact penalties for those who break the law. So that people who work in adoption services here, as well as people who work as what we call adoption service providers from the United States understand what the rules of this process are, and that if they do not abide by those rules and laws they will no longer be able to participate in these programs.

We are very concerned. There should never, ever, ever be a case where an American citizen adopts a child who is not eligible to be adopted. There is no tolerance in my country for the buying or selling of children. Children are not commodities. Children are human beings.

We believe very strongly that you can tell a lot about a society by how it treats its most vulnerable members, and in every society that is of course our children. We want to work very hard with representatives of the government of Vietnam to make sure that child selling never occurs.

**Question #1: What are the U.S. regulations for a child to be adopted? Under Vietnamese law, even children whose parents are still alive can be adopted. If there is any difference between the two countries' laws, what are the solutions for American citizens who adopt Vietnamese children but cannot get visas for them?**

Technically speaking, the U.S. government does not have any regulations concerning adoptions in Vietnam; that is question for the Vietnamese government. Instead, U.S. regulations govern a closely related issue: under what circumstances does an adopted child qualify for an immigrant visa to travel to the United States to live with his or her adoptive parents. If, for example, an American Citizen wishes to directly adopt his 17-year-old cousin for sentimental reasons and the Government of Vietnam permits it, that's fine, but the adopted cousin will not qualify for any category of immigrant visa to travel to the United States. Turning to your specific question, if an American Citizen adopts a child "whose parents are still alive", that child can immigrate to the US if the adoption took place while the child was under the age of 16 and the American Citizen had at least two years of legal and physical custody of the child (with the periods of legal and physical custody not necessarily simultaneous). At that point, the child is considered the American Citizen's "child" and an immigrant visa petition

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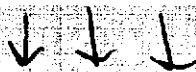
(known as an I-130) can be filed on the child's behalf by the adoptive parents. In practice, of course, this normally necessitates the American Citizen residing with the child in Vietnam or a third country for two years.

Similarly, there are no US regulations regarding the adoption by American Citizens of children defined by the Government of Vietnam as "orphans" – those are governed by Vietnamese law. While we tend to think of orphans only as children whose parents are no longer living, a number of countries also have legal avenues by which a child can be relinquished by the birth parents and therefore considered to be legally an orphan. These are questions for Vietnam to decide. What is governed by US law and regulation, of course, is the immigration of "orphans" to the US. If they meet the US definition of "orphan" set forth in INA 101(b)(1)(F) and 8 CFR, the adoptive parents can file what is known as an I-600 petition on behalf of the adopted child. This petition allows for immediate (as soon as all the paperwork is done) immigration. Even if the adopted child does not meet the U.S. definition of an orphan, the U.S. government does not say that the Vietnamese adoption is void -- that is a decision to be made by the Government of Vietnam. If the child does not meet the U.S. definition of an orphan, however, the parents can't use the streamlined I-600 procedure for immediate immigration and will instead have to use the slower I-130 procedure that allows the child to immigrate after two years of legal and physical custody.

We have no issues with anyone adopting anywhere, assuming the children are willingly given up by their birth parents, but we only grant expeditious immigration to true orphans (under our strict definition) because of their special need.

While Vietnam has not joined the Hague Convention on adoptions, it has taken various steps to bring its adoption procedures more in line with international norms. Article 35 of Decree No. 68/2002/ND-CP of July 10, 2002 ("Detailing The Implementation Of A Number Of Articles Of The Marriage And Family Law On The Marriage And Family Relations Involving Foreign Elements") said foreigners could adopt Vietnamese children only "if Vietnam and the countries where the child adopters permanently reside have signed agreements or have together acceded to international agreements on child adoption cooperation". Since no countries had bilateral agreements with Vietnam at that time, this decree resulted in a de facto suspension of international adoption from Vietnam. This shut down

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came at a good time since our own investigations at the time as well as reports in the press had revealed significant reports of baby buying and baby selling. The buying and selling of humans is never allowed and the U.S. could not be a party to such transactions by allowing babies that may have been bought or sold to benefit from expedited immigration procedures.

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After the signing of a bilateral agreement on adoptions and the reopening adoptions in 2005, a number of disturbing trends have emerged. Perhaps the most disturbing of all is the huge growth in "abandonments" -- babies that are reportedly found by a third party after being anonymously abandoned. Prior to the shut down in 2003, approximately 70% of cases were relinquishments (cases in which the parents signed legal documents relinquishing their biological child for adoption). Today relinquishments account for only 15%; 85% are purported abandonments. This rise in abandonments is deeply troubling for a number of reasons. Among our concerns is that a large number of these reported abandonments are not really abandonments at all. Instead, hospitals and orphanages know exactly who the birth mother is but for various reasons choose to hide this information and list the baby as abandoned rather than obtaining a signed, legal document of relinquishment. Our investigations have uncovered numerous cases in which birth parents have been pressured or even tricked into giving up their children. Due to the fact that these actions do not meet legal standards for "relinquishment," the babies are reported as "abandoned" and records indicating the identity of the birth parents are altered or destroyed. We have learned, for example, some parents have been told that they cannot see their children until after they pay large outstanding hospital bills relating to the delivery. When the family is unable to pay, they are presented with the option of abandoning their child in exchange for forgiveness of the debt and perhaps some extra cash payment. There have been other cases in which illiterate parents have been presented with documents to sign that they cannot read. They are falsely told that the document is a form to allow them to see their new baby when in reality it is a document stating that they abandon their child. Such practices amount to the buying and selling of children and is not allowed under U.S. law or international practice.

Remember what I said at the start about our primary goal being protecting the interests of children who need parents. The types of abuses we are seeing in Vietnam result from a system that is more geared toward providing parents with babies than toward protecting the child. This causes us grave

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concern. To help cope with this problem, in the fall of 2007 the U.S. adopted a program known as "Orphans First." Under the "Orphans First" program, a petition to adopt an infant from Vietnam is not approved in the USA until after it is determined that the baby is legitimately available for adoption. After a baby is cleared for adoption, the prospective adoptive parents are given a letter informing them that it is OK to travel to Vietnam to complete the immigrant visa process. One of the problems we hoped to address with this policy is the negative impact on American families that occurs when prospective parents travel all the way to Vietnam only to find that the child they had hoped to adopt is not legally able to be adopted because of doubts about whether the child is genuinely an orphan or was lawfully relinquished.

Despite the concerns over irregularities in the adoption process, a large number of adoptions have taken place. In 2006 the Embassy issued 163 visas for adopted children in 2007 this grew to 828. Since Orphans First started in late 2007 we have issued 61 visas and sent over 100 letters to parents indicating that it is OK for them to travel to Vietnam to proceed with a planned adoption.

While quite a bit has been written in the press about cases in which adoptions have been denied, the reality is that the number of denials has been relatively small when compared to the over one thousand adoptions that have taken place. Since the adoption program restarted in 2005, we have issued only 21 "Notice of Intent to Deny" letters to parents. While it is true that 13 were issued since October 2007, it should also be noted that post had a major staffing increase in September 2007, allowing us to increase the number of cases that we investigated. As I noted earlier, these investigations have revealed a number of disturbing cases.

**Question #2: The Adoption Agreement signed by Vietnam and the U.S. in 2005 has come close to expiry. Will the two sides sign another adoption agreement?**

When we signed the Memorandum of Agreement in 2005, both sides were hopeful that this agreement would form the basis of a transparent adoption system that protects the children of Vietnam. We are disappointed that this agreement failed to live up to its promise. Due to the numerous problems we have uncovered in the adoption process, the U.S. will not be able to renew the Adoption Agreement in its current form. Our first priority must

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be to protect the interest of the children involved. As long as there is compelling evidence that Vietnamese children are being separated from their birth parents by methods that are not in accordance with the Adoption Agreement or international standards, the U.S. cannot renew the agreement.

We are also disappointed that the Government of Vietnam has not published the schedule of fees that both sides agreed to be critical to establishing a level of transparency necessary as a basic protection against abuse of the adoption process. We share the Ministry of Justice's concern that some adoption agencies are making large unregulated cash payments to orphanages. I believe that these cash payments distort the entire adoption process by shifting the motivation for adoptions from looking after the interests of the children to making a profit through the adoption process.

Despite these problems, we are also acutely aware that there are orphans in Vietnam who need parents. That is why the United States is strongly committed to continuing intercountry adoptions from Vietnam if possible. We are discussing with the Government of Vietnam the possibilities for a new agreement that will result in concrete steps towards establishing a more transparent adoption process with the safeguards necessary to protect children, birth parents, and adoptive parents.

**Question #3: What are pieces of advice the U.S. Consulate General gives to American families who want to adopt Vietnamese children?**

With the Memorandum of Agreement set to expire, at this time we are warning Americans that if they start the adoption process now they will not be able to complete an adoption before September 1. For those who have started the process, we urge adoptive parents to be extremely diligent in reviewing qualifications and standards before selecting an adoption service provider. Unfortunately, as news stories and blogs often reveal, a glowing report from adoptive parent who successfully "brought home" a child cannot be taken as evidence that the adoption was ethical or fully legal. It is possible that the adoptive parents are not even aware that the child was not really an orphan and that the adoption may have been illegal.

Prospective adopting parents should discuss the issue of fees with their agency. The agency should be able to provide them with a complete schedule of fees for their adoption. Prospective adopting parents should note that currently fees can vary significantly between provinces and agencies.

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Additionally, the Department for International Adoptions has informed the Embassy that direct cash parents from adopting parents to orphanages and orphanage staff in Vietnam are a violation of Vietnamese law and regulations.

**Question #4: What measures does the U.S. Consulate General take to prevent child trafficking via adoption fraud?**

We do our very best do investigate adoption cases that appear to have indications that something could be amiss. Unfortunately, we often find that our investigations run into roadblocks. We have found numerous instances where documents have been modified, written statements have been back-dated to make it appear that they had been made in the past, and other attempts have been made to thwart our investigation. While some hospitals and orphanages are very open and willing to cooperate, others simply refuse to provide us with any information concerning the origins of babies put up for adoption.

I do not want to lead your readers to believe that adoptions are fraudulent. That certainly is not true. At the same time, our investigations have uncovered many disturbing cases. I'll provide you with just a few examples, but I will have to leave many of the specific details out in order to protect the privacy of the individuals involved.

The first example took place right here in Ho Chi Minh City. The I-600 petition for an immigrant visa filed by an American couple on behalf of a child that they wanted to adopt claimed that the child was born at a certain hospital here in HCMC and that the birth mother left the hospital and was untraceable. Our investigation revealed, however, that the child was born by C-section at a different hospital. The child was pre-mature and had significant respiratory problems and thus was transferred to the hospital named on the I-600 petition. Based on information from the hospital director, we were able to locate and interview the birth mother, who stated that she had visited her son at the hospital several times, but that hospital staff would not let her hold the child until she paid a 12,000,000 dong hospital bill. She stated that she applied to have the bill reduced due to her low income, but the request was refused. Additionally, she stated that she had been told that her child would require lifelong treatment for "water on the brain" and that as a result, her son had been transferred to a certain orphanage for care. The birth mother was understandably shocked to hear

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that the medical report from the U.S. panel physician who examined the baby stated that the child was actually healthy.

When confronted with the fact that the birth mother had stated that she never agreed to relinquish her child, the intermediary in the adoption process produced a certificate of relinquishment signed by the birth mother on the same day that our staff was able to locate and interview the mother. We were immediately concerned, since that same intermediary had previously told the prospective adoptive parents that the child was abandoned and the birth mother could not be located. We then followed up further by questioning both the birth mother and intermediary involved in the adoption, we learned that the intermediary had taken the birth mother to the police station and told her that if she signed the paperwork she would receive 200,000 dong and would be allowed to see her son. The birth mother, who is illiterate, signed the paperwork even though she did not know what it said because she wanted to see her son. She thought, however, that the paper just allowed her to see her son; she had no idea that by signing it she was giving up her son.

The facts of this case shocked us and we did our best to present the mother's case to the government of Vietnam. After considerable discussion, the adoption was canceled and the child is now back with the birth parents.

The second example occurred in a village in a rural province. The Consulate's consular section investigated two relinquishment cases from this village. The two cases had many commonalities. First, the birth mothers, who are from an ethnic minority, stated that they had unexpected pregnancies that were medically complicated and thus quite expensive. The mothers stated, and witnessed verified, that the mothers were approached by a nurse at the village clinic who promised to help the women, promising to give the women 3 million Vietnamese Dong each in return for putting the children in a local social sponsoring center (orphanage). The consular investigation, however, showed that the women received little, if any, actual funds because they were given highly inflated hospital bills and told that most of the promised 3 million dong went to pay these expenses. The investigating team also visited the center where one of the women was sent to give birth. Women from surrounding villages with unexpected pregnancies are told they can stay here for free, but later are told they owe a \$60/month fee, although this fee is not on the center's fee schedule. Also, center policy forbids birth mothers from seeing their children after delivery.

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We believe that these policies are designed to pressure mothers into giving up their children for adoption.

Our investigation also showed that it was never made clear to the birth mothers that they were relinquishing their children for foreign adoption. The first birth mother stated that her sister-in-law and the nurse had taken care of all the paper work for her but that that she "knew" her child was still in the social sponsoring center when in fact it had been adopted by a foreign couple. She stated that she had not given her consent for the child to be adopted and that she believed the child would "return when he was older to help take care of his mother and father." The second birth mother stated that she had signed papers allowing another local woman to adopt her child. She stated that she did not consent to a foreign adoption because she still wanted to see her son.

Given these circumstances, adopting families were informed that official letters, known as "Notice of Intent to Deny," would be issued in these cases, meaning that immigrant visas for the children to go to the USA could not be issued. The day after the adopting families received this information, both birth mothers were summoned to appear at the Commune People's Committee Offices where they were criticized for irresponsibly becoming pregnant and told to sign papers confirming the relinquishment. The women were also summoned to Hanoi to speak with officials there, but were told that they had to pay their own way for the trip, which cost the equivalent of three times their monthly income. Both women reported that they were so frightened about the trip that they became physically sick. Finally, two days before a follow up consular team interviewed the women, local police officials spoke with them and "reminded" them that they had consented to the adoption.

The American consular team spoke also spoke to another woman in the same village. She told the team that she had become pregnant unexpectedly, and that the very same nurse involved in the other cases had helped her put her child in the social center. A few months later an American family came to visit her and gave her 500,000 Vietnamese dong and pictures of her baby. The mother told the U.S. Consular team that she believed her baby was still at the center but that the American family had agreed to pay for the child to go to school in America once she was 15 years old. The woman also showed the American consular officer a Christmas card this family had sent her. Using the information that the mother provided, we were able to

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determine that even though the birth mother believed her child was still at the center, the American couple had in fact had adopted the child. Unfortunately, because we did not know all of the facts of the case when processing the visa case, the child had already been issued an Immigrant Visa and was in the USA.

We have shared our concerns on these cases and many others with the Vietnamese government. In some cases the adoption was canceled, but sadly in many others, weaknesses in the legal structure prevented these children from being returned to families that wanted them.

We are also providing technical assistance to the Government of Vietnam to help with the process of improving Vietnam's laws pertaining to adoption so that Vietnam can join the Hague Convention.

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