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By Atty. Michael Gurfinkel

**IMMIGRATION CORNER**

*DEAR Attorney Gurfinkel: My husband and I are US citizens, and have been trying to have a child for several years now. My unmarried niece in the Philippines is pregnant, and is about to give birth. She is very poor and cannot afford to raise the child. I know that I will be able to provide a good life for her child. I was thinking of flying to the Philippines when the child is about to be born, and have the child's birth certificate registered, showing me as the natural mother.*

*My husband and I would then apply either for a US passport for the child, or petition the child.*

*Do you think that we will encounter any problems if we were to claim the child as our own, and bring the child to the US?*

Very truly yours,  
SA

Dear SA:

I would strongly advise against bringing the child to the US in the manner you suggest. The Embassy and the Philippine authorities refer to this type of wrongful conduct as "adoption fraud." Typically, this fraud involves a married couple falsely claiming a "given" child as theirs, (through a supposed birth) and applying for a US passport for the child, or filing a petition for the child as their own "immediate relative".

The US Embassy is well aware of how people attempt to engage in such fraud. The Foreign Affairs Manual (which is a manual containing guidance for the Embassy), lists various types of suspicious activity, which may indicate "adoption fraud", and the steps the Consuls should take in order to determine whether or not the child is the couple's natural child.

If a man claims a child is his natural child, but the circum-

# The Embassy is Aware of 'Adoption Fraud'

stances surrounding the birth of the child are suspicious, the Embassy may decide to dig deeper, and investigate whether or not the supposed father had access or physical contact with the mother at or about the time of the conception. For example, if a child was born in a particular month, the Embassy would want to make sure that the father and mother were together nine months earlier. If the documentation shows that the father was in the U.S., and the mother was in the Philippines during the time of the supposed conception, then how could he be the father of the child?

If a woman claims to be the mother, some of the warning signs of adoption fraud are:

1. The alleged mother arrives in the Philippines only a few days before the child's birth.
2. The alleged mother is middle-aged, or this is the first child of a couple who has been married for many years.
3. The child was born in a private home (not a hospital), with the mother unattended, or only with a midwife (*hilot*) present.
4. The alleged mother claims to have had no prenatal care and not to have known the baby's due date.
5. The alleged mother claims the child was born prematurely.
6. The physical features of the child and the alleged parents do not seem compatible (the child does not resemble the parents).
7. The mother has no pictures of herself while she was pregnant.
8. A medical exam of the "mother" reveals she never gave birth.

There are many more "warning signs" of adoption fraud, and if any of these warning signs are present, the Embassy will undoubtedly investigate further, including interviewing neighbors. The Embassy may even suggest that the couple undergo DNA testing, in which case the results must be at least a 99% "match", in order for paternity or maternity to be established.

If anyone wants to bring in a child, I suggest that they seek the advice of a reputable Attorney, and do it the legal way, by adopting the child through court action before the child's 16th birthday. There are two ways to adopt:

Petition the child as an orphan (if the parents are dead, have abandoned the child, or the natural mother is in capable of providing proper care and support),

Petition the child as an adopted child (by having two years of legal and physical custody).

Also, the natural parents should not be raising the child you adopted. Even if you satisfy the requirements of adoption, the case could still be denied if the natural parent(s) continue exercise "primary parental control" over the child. If you are going to adopt, you need to follow and comply with the rules, and not try to find ways around them. Under no circumstance should anyone engage in adoption fraud. It is wrong and illegal.

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Michael J. Gurfinkel is an active member of the State Bar of California and New York. All immigration services are provided by, or under the supervision of, an active member of the State Bar of California. Each case is different.  
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