



## QUESTIONS AND ANSWERS

February 7, 2002

### **Adoption Processing in Cambodia**

In December 2001, the Immigration and Naturalization Service (INS) suspended the processing of Cambodian orphan petitions. U.S. immigration law requires a petitioner to establish that a child meets a very specific legal definition of “orphan” before an adoption petition is approved. Due to the lack of systematic record keeping and to irregularities in documentation in Cambodia, INS and the Department of State (DOS) were unable to make that determination with any reasonable degree of certainty. The deficiencies in the Cambodian adoption process impede INS’ ability to determine that the prospective adoptive children have been made available for international adoption under circumstances that meet the requirements of U.S. immigration laws.

An experienced team of high-level INS officials was dispatched to Cambodia in mid-January to assess the problems, to meet with Cambodian and DOS officials in Phnom Penh and to make recommendations to resolve the situation. Until the Cambodian government puts in place transparent and consistent adoption procedures, processing of orphan petitions is not possible. While we understand that this situation is difficult for prospective parents seeking to adopt in Cambodia, INS and the Department of State are working with Cambodian officials to improve the orphan petition process in order to protect the interest of Cambodian birth parents and children, as well as prospective U.S. adoptive parents.

#### **1. Why did INS suspend the processing of orphan petitions in Cambodia?**

INS does not have an office in Cambodia, and normally is not directly involved in the Cambodian orphan process. In October 2001, however, the U.S. Embassy in Cambodia identified orphan petitions that required further investigation and requested INS to assist in the review and assessment of those cases. During this review, U.S. officials became seriously concerned about the lack of consistent and proper record keeping by Cambodian orphanages. The lack of or questionable documentation raises serious questions about the orphan status of the children being made available for foreign adoptions.

In September 2001, we received reports of two Cambodian children -- one four days old and the other six months old -- who were abducted from their birth mothers earlier in the year by an organization claiming to assist widows and orphans. The birth mothers contacted a Cambodian non-governmental organization seeking assistance to locate their missing babies. INS officers discovered that one of the children had been matched for

adoption with a U.S. family in a case that was pending at the U.S. Embassy in Phnom Penh. Although the Cambodian government already had given permission for this child to be adopted, the supporting documentation -- birth certificate, certificate of abandonment, certificate of orphan status, and biography of the alleged abandoned child - - was false. Both children were returned subsequently to their birth mothers by Cambodian authorities.

The non-governmental agency has reported to U.S. officials that there are other cases where children have been taken from their birth parents, with limited success in returning the children to their parents in Cambodia. INS' responsibility to determine that a child is truly an orphan must not be tainted by any action that results in the exploitation of innocent children by separating them from their biological families as a result of fraud, trafficking in human beings or other criminal activity.

## **2. Are visas being issued by the Department of State (DOS) for orphans adopted in Cambodia?**

As of December 21, 2001, INS suspended the processing of petitions for orphans in Cambodia. As a consequence, neither INS nor DOS will process petitions that classify a Cambodian child as the child of a United States citizen or allow the child to immigrate to the United States. This means that although Cambodia may continue to allow U.S. citizens to adopt children, the immigration of those children to the United States cannot proceed at this time.

The suspension did not affect the 32 petitions that DOS had scheduled previously for visa appointments in January.

## **3. Will Cambodia continue to allow U.S. citizens to adopt children?**

The U.S. government does not have jurisdiction over another government's actions. However, we have asked the Cambodian government to stop issuing adoption decrees to U.S. citizens. The suspension of visa processing for orphans means the immigration of those children to the United States cannot proceed at this time. Please be assured that INS is aggressively addressing the U.S. suspension of orphan petition processing with the Cambodian government in an effort to establish an adoption process that will protect the interest of the Cambodian people and prospective adoptive parents.

## **4. Has the United States ever suspended orphan petition processing before?**

Although the United States has not suspended processing before, INS and DOS have expressed concern about questionable documentation and procedures in several countries. When INS announced the suspension of orphan petitions in Cambodia in December 2001, INS also announced that it is conducting a review of the adoption process in Vietnam. It should be noted that several countries, including Cambodia, have in the past voluntarily suspended their own foreign adoption process. The Cambodian government, in March 1999, received allegations of baby trafficking from a non-governmental

organization. As a result, the government closed one orphanage, and in April 2000, suspended adoptions after determining that there were no standards and processes in place to govern and regulate international adoptions. The suspension was lifted one year later, in March 2001, due in part to the implementation of some new adoption procedures.

### **5. What made the orphan petition process so problematic in Cambodia?**

As stated above, U.S. immigration law requires a petitioner to establish that a child meets a very specific legal definition of “orphan” before an adoption petition is approved. Due to the lack of systematic record keeping and to irregularities in documentation, INS and DOS were unable to make that “orphan” determination with a reasonable degree of certainty in most cases. These irregularities include discrepancies in permits of abandonment (which establish that a child has been abandoned by the birth parents), inadequate birth certificates, and a lack of any records at certain orphanages that explain how the child came to the orphanage. The deficiencies in the process impede INS’ and DOS’ ability to determine that prospective adoptive children are being made available for international adoption under circumstances that meet the requirements of U.S. immigration laws.

### **6. What can INS tell U.S. citizens who believe that they have received a final adoption decree from the Cambodian government?**

INS is looking into this situation very carefully. At this point, the information and research obtained from independent sources, and which INS and DOS have verified with the Cambodian government, indicate that these documents are not final adoption decrees but are, in fact, a letter from one ministry to another, granting permission for a specific child to be adopted. It also appears that there are inconsistencies in the translation of documents (from Khmer to English), which are provided to U.S. citizens by the independent facilitators, not the Cambodian government (see the INS website for samples of these documents). Furthermore, the Cambodian government has verified to the U.S. government that an adoption is final only at the conclusion of the “giving and receiving ceremony,” which must take place in person before Cambodian government officials in Cambodia. No third-party, proxy adoptions are allowed under Cambodian law.

### **7. How long will the suspension last? When will INS start processing orphan petitions again in Cambodia?**

INS and DOS are working with Cambodian authorities to develop a process that complies with all the requirements of U.S. law and that protects the interests of Cambodian birth parents and children, as well as prospective U.S. adoptive parents. Until a transparent, regularized, and consistent adoption process is in place, INS and DOS will not adjudicate Cambodian orphan petitions. INS has outlined several initiatives to improve and strengthen the integrity of the international adoption program, including the following:

- Initiate a general review of international adoption procedures;

- Continue to work with DOS to identify weaknesses in the process and to implement the principles of the Hague Convention on foreign adoptions, which regulates foreign country adoption procedures and international adoption agencies; and
- Host a summit with adoption agencies and advocacy groups to discuss international adoption issues and methods by which INS and DOS and such agencies can give prospective parents a clear and realistic understanding of the international process.

### **8. Why were 32 petitioners allowed to continue with the process and no others?**

DOS had already scheduled these petitioners for visa appointments, the final step in the orphan petition process, prior to suspension on December 21, 2001. DOS also advised INS that those petitions were scheduled because an initial determination indicated that those petitions were unlikely to reflect the irregularities described above. DOS has not scheduled any appointments beyond January 2002.

### **9. If I have an I-600A petition approved for adoption in Cambodia or a pending I-600A petition, what should I do?**

For prospective adoptive parents who are now considering an inter-country adoption in another country, the following information is provided:

**Prospective Adoptive Parents with an Approved I-600A** Prospective adoptive parents, who have an approved I-600A that has been sent to the U.S. Embassy in Cambodia, may request that INS transfer the approved I-600A to enable prospective parents to adopt in a country other than Cambodia.

The request should be made on Form I-824, Application for Action on an Approved Application or Petition, and must be filed with the INS District Office that approved the I-600A. If possible, include a copy of the I-600A approval notice with the Form I-824. If you mail the form to the appropriate INS District office, please ensure that you write on the outside of the envelope:

#### **Attention: Cambodia Adoption Case.**

No fee is required with this application if filed on or before June 30, 2002.

**Expired or Expiring I-600A** Petitioners with an approved I-600A, which was sent to the U.S. Embassy in Cambodia, and is due to expire on or before June 30, 2002, may file a new I-600A if they intend to adopt a child in another country. The fee will be waived on a new I-600A if filed on or before June 30, 2002. This fee waiver is available only for I-600As affected by the suspension of orphan petition processing in Cambodia.

**Pending I-600A** Petitioners with a pending I-600A, who indicated that they were adopting in Cambodia, but would now like to adopt in a country other than Cambodia,

should contact the INS District Office where the I-600A was filed in order to amend the I-600A. There is no fee to amend the I-600A.

Please note that while INS may still approve an I-600A for prospective adoptive parents who indicate they intend to adopt in Cambodia, notification will not be sent to the U.S. Embassy abroad for visa processing until the suspension is lifted.

Any petitioner can choose to wait until the suspension is lifted, however, the I-600A will expire 18 months after it was filed, and INS cannot predict when the suspension will be lifted.

**10. What can INS and DOS tell prospective adoptive parents whose appointments for visa processing at the Embassy in Phnom Penh were cancelled between October and December, and who were not among the 32 petitioners that DOS scheduled for appointments in January?**

Prospective adoptive parents who were in the process of adopting a child from Cambodia, but whose visa appointments were cancelled will be unable to complete the process in Cambodia at this time. They can choose to wait until the suspension is lifted, however, we cannot predict when the suspension will be lifted. They also have the options discussed in question 9.

**11. Has INS suspended processing in Vietnam as well?**

INS announced that it is conducting a review of the orphan petition process in Vietnam. At this time, the processing of orphan petitions for Vietnam will continue. INS and DOS are working with Vietnamese authorities to develop a process that complies with the requirements of U.S. law and to implement a consistent foreign adoption process. The Vietnamese government is also reviewing its regulations to ensure transparency in the adoption process. Until such transparency is in place, however, individuals seeking to adopt in Vietnam can expect lengthy delays as they complete the U.S. immigration process. Adopting parents should also be aware that the children they wish to adopt may be unable to immigrate to the U. S. due to continuing irregularities in the adoption process in Vietnam. For further information on the processing of orphan petitions from Vietnam please visit the INS Ho Chi Minh City web page at <http://www.immigration.gov/graphics/shared/fieldoffices/overseasoffices/bangkokdistrict/hochiminh/HCMadopt.htm>