

International Family Services

Prohibition Against Child Buying Training and Quiz on Policy and Procedures,

In compliance with the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (commonly referred to as “the Hague”), the U.S. Intercountry Adoption Act (IAA), and in an effort to protect the best interests of children, International Family Services (IFS) has adopted a policy prohibiting child buying. This document explains the reason behind this policy and IFS’s procedures which put it into effect. A brief quiz is also part of this document. Its successful completion serves as evidence of attendance for training purposes.

IFS Policy: Prohibition Against Child Buying

The following policy was adopted by the IFS governing board in October, 2007.

It shall be the policy of International Family Services that

- 1) IFS will prohibit its employees and agents from giving money or other consideration, directly or indirectly, to a child's parent(s), other individual(s), or an entity as payment for the child or as an inducement to release the child;
- 2) If permitted or required by the child's country of origin, IFS may remit reasonable payments for activities related to the adoption proceedings, pre-birth and birth medical costs, the care of the child, the care of the birth mother while pregnant and immediately following birth of the child, or the provision of child welfare and child protection services generally; and
- 3) Permitted or required contributions shall not be remitted as payment for the child or as an inducement to release the child. – *Ref: 22CFR96.36(b)*

Worldwide Child Buying Practices

Children are trafficked worldwide for a variety of purposes. Recognition of this fact has led world governments to enact such agreements as the United Nations Convention on the Rights of the Child. The text of this convention, for example, states, “States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.”¹

International adoption is considered one way children are trafficked.

Trafficking of children is the recruitment, transportation, transfer, harboring, or receipt of children for the purpose of exploitation.

Exploitation includes forcing children into prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs. For children exploitation may include also, illicit international adoption, trafficking for early marriage, recruitment as child soldiers, for begging or as athletes (such as child camel jockeys or football players), or for recruitment for cults.²

One of the major purposes of the Hague Convention on intercountry adoption is reflected in the convention preamble. “Convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children.”

Article I of the convention therefore states,

The objects of the present Convention are –

- a) to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law;
- b) to establish a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;
- c) to secure the recognition in Contracting States of adoptions made in accordance with the Convention.³

As part of the United States’ efforts to implement the Hague treaty, international adoption service providers (ASP) based in the U.S. must adopt an agency policy prohibiting child buying and follow procedures to implement the policy. This is part of the accrediting standards agencies must meet in order to receive the necessary accreditation required before they can act as a primary ASP under the IAA after April 1, 2008.

Child Trafficking Concerns in Adoptions

Many Americans first became aware of child buying incidents in international adoption through the exposure of irregularities involved with Cambodian adoptions. In early 2002, the U.S. Department of State (USDOS) announced,

On December 21, 2001, the then-Immigration and Naturalization Service (INS) announced an immediate suspension of the processing of adoption petitions for Cambodia. This decision was based on numerous concerns related to the fraud environment in Cambodia as well as the lack of a sufficient local legal framework and other safeguards to protect the children’s best interests. On January 25, 2002, the Cambodian Ministry of Foreign Affairs verbally notified the U.S. State Department that it would suspend the issuance of adoption documentation to American families in acknowledgement of trafficking concerns and other problems in the adoption process.⁴

The adoptions of numerous families that were affected by this suspension received high profile treatment in the news media.⁵

Similar concerns are evident with a similar impact in 2008 in Guatemala and Vietnam.⁶ The Guatemalan government implemented a new law in January 2008 with the intent of reforming adoption practices which can lead to child trafficking. Part of the official efforts involves a personal interview with the birth mother who placed her child for international adoption to confirm that she has done so voluntarily, without financial payment or other incentive, and to confirm the child was not stolen. As of mid-June 2008, the National Adoptions Council and the attorney general of Guatemala had interviewed approximately 750 mothers of the pending 2,286 pending adoption cases. They nullified the proceedings of 26 adoptions and began prosecutions against nine birth mothers, lawyers and civil registrars who were involved with document forgery.⁷ Adoption cases cannot proceed until this process is completed.

As of mid-2008, adoptions in Vietnam also have also been questioned for similar reasons. In early 2008, the USDOS issued a report listing their concerns about Vietnamese adoption practices.⁸ They include the following.

- little functional oversight by the central government of powers delegated to the provincial officials leading to corrupt practices,
- an unwillingness by the central government to censure adoption abuses when presented with evidence
- patterns of immigration fraud based on forged or fraudulent documents (not just limited to adoption cases),
- an inverting of the relinquishment-abandonment ratio not accounted for on any other basis than fraud
 - under the pre-2002 legal structure in Vietnam, biological parents relinquished their children for adoption on an 80-to-20 ratio when compared to abandonments (where parents are unknown)
 - under the current legal structure (post-2005) the ratio has inverted to 15-to-85 for relinquishments-to-abandonments at orphanages that engage in international adoption, while orphanages which do not adoption out children internationally retained the previous 80:20 ratio,
- a donation system where adoption service providers (ASPs) contribute to an orphanage on a “per child placed for adoption” basis encourages orphanage directors to
 - seek bids from ASPs to receive the highest contribution rates and solicit sight-seeing and shopping trips to the U.S. from the ASPs
 - meet placement quotas illegal means
 - make payments to birth families, social workers and nurses to encourage the placement of a child in the orphanage
 - insist on cash payments from adoptive parents

As a result of the USDOS report, the Hanoi government stated that it will no longer process adoption cases after July 1, 2008. After September 1, 2008, they will also return all previous submitted family dossiers in cases where a child referral has not be made to and accepted by the adoptive family.⁹ These actions could effectively stop adoptions from Vietnam.

The Joint Council for International Children’s Services believes that the answer to the problems of adoptions is “to end corruption, but not a child’s right to a family,”¹⁰ while “recognizing that the provision of services must be designed and implemented to serve the best interest of children and not create orphans or encourage abandonment or relinquishment.”¹¹ In this spirit, they have developed a set of best practices that include the following.¹²

- Financial --
 - no per child payments for inducement for placements,
 - no contingency payments for placements,
 - contracts list costs and services,
 - standard fee disclosure forms,

- measures to prevent bidding by ASPs to provide adoption and social services for an orphanage, and
- delegation visits to U.S. only conducted as a joint project by ASPs (min. of 3).
- Supervision – only one degree of separation between the ASP and the in country provider.
- Child tracking --
 - records note the details of the child’s entry into care, including the parents’ names and contact information and circumstances of relinquishment or abandonment,
 - early determination of child’s orphan status by sending and receiving governmental authorities, and
 - no child referral prior to his/her legal status is established (called ‘soft’ referrals).

Though these standards are specific to the conditions in Vietnam, they illustrate the kinds of efforts that can be applied elsewhere. For example,

- financial transparency for funds spent abroad,
- documentation on the child’s background,
- fee for service only, no contingency fees for child placement, and
- supervision of foreign service provider.

Code of Federal Regulations and the I-800

Many of these provisions are included in the regulations promulgated by the USDOS as standards that accredited adoption agencies must follow under US law. The text of the Code of Federal Regulations (CFR) and the Form I-800 Petition to Classify Convention Adoptee as an Immediate Relative, reflect child buying concerns.

Financial Provisions Against Child Buying

The federal regulations issued by the USDOS contain specific language intended to inhibit child buying.¹³

§ 96.34 Compensation.

- (a) The agency or person does not compensate any individual who provides intercountry adoption services with an incentive fee or contingent fee for each child located or placed for adoption.
- (b) The agency or person compensates its directors, officers, employees, and supervised providers who provide intercountry adoption services only for services actually rendered and only on a fee-for-service, hourly wage, or salary basis rather than a contingent fee basis.
- (c) The agency or person does not make any payments, promise payment, or give other consideration to any individual directly or indirectly involved in provision of adoption services in a particular case, except for salaries or fees for services actually rendered and reimbursement for costs incurred. This does not prohibit an agency or person from providing in-kind or other donations not intended to influence or affect a particular adoption.

Comments about these regulations are contained in the Federal Register. They provide key information about the Department’s interpretations of regulations on which the public has commented. In regard to §96.34, DOS writes,

The Convention directs public foreign authorities and public domestic authorities to prevent improper

financial gain in connection with an intercountry adoption. Further, section 203(b)(1)(A)(iv) of the IAA [Intercountry Adoption Act which these regulations implement] specifically bars agencies and persons from retaining personnel on a “contingent fee basis.” Generally speaking, a fee is contingent if it is only paid if an adoption is completed. The standard prohibits contingency fees consistent with the IAA statutory mandate. We are maintaining the prohibition in § 96.34(a), and have clarified that the standard prohibits contingency fees for each child “located” for an adoptive placement, in addition to contingency fees for each child “placed” for adoption (p. 8089).

Fees for adoption services do not constitute incentive fees (p. 8090).¹⁴

Thus, recruitment of families, adoption services such as home studies, domestic or foreign case management services and travel assistance to families abroad do not constitute child buying. However, for example, making a donation to the orphanage contingent on receiving a child’s file for referral to a family is an improper inducement.

In order to provide a basis to ensure that no improper payments have been made for child location or placement, the form I-800 (filed by the prospective adoptive parents (PAP) with the U.S. Citizenship and Immigration Service (USCIS)) asks for a listing of fees paid, to whom and for what purposes.¹⁵

| Part 4. Information About Fees, Expenses and Other Compensation | | | | |
|--|-------|-----------------------------------|--------------------|--|
| 1. Information on payments already made: As of the date of the signing of this Form I-800, I (or, for a married petitioner, we) have made the following payments, including in-kind contributions, in relation to the adoption of the child identified in this Form I-800. The following table includes all fees, expenses, in-kind contributions, and other compensation that I (we) have made, either directly or indirectly, to any individual, agency, entity, governmental authority, or other payee or recipient. | | | | |
| Date (mm/dd/yyyy) | Payee | Relationship to Child (if any) | Purpose of Payment | Amount of payment (or description and value of in kind consideration) |
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| 2. Information on anticipated future payments: The following table includes all fees, expenses, in kind contributions, and other compensation as of the date of the signing of this Form I-800, that I (we) reasonably expect to make, either directly or indirectly, to any individual, agency, entity, governmental authority, or other payee or recipient. | | | | |
| Anticipated Date of Payment (mm/dd/yyyy) | Payee | Relationship to Child (if any) | Purpose of Payment | Amount of payment (or description and value of in kind consideration) |
| | | | | |

Figure 1. This table is the Form I-800 (Part 4, #1, page 8), completed by the prospective adoptive parent(s) as part of the adoption approval process by the U.S. Citizenship and Immigration Service.

In addition, the parent must sign the following statement in the I-800 form (Part 5, page 9).

I certify, under penalty of perjury under the laws of the United States, that:

- 1) Each answer I have given to each question on this Form I-800 is true and correct to the best of my knowledge, information, and belief; and
- 2) That I (and my spouse, if married) have not paid, given, or transferred any money or any other thing of value to any individual or entity as compensation or inducement for that person's consent to the child's adoption, and I (and my spouse, if married) have not authorized, permitted, or in any way condoned any such payment, gift, or transfer by any individual or entity acting on my (or our) behalf.

Child Tracking Provisions Against Child Buying

The Form I-800 also includes sections to track the custody of the child and any parental contact.

Part 3, Items #9-13, refer to Article 16 of the Hague Convention which calls for a report on the child. This report (which may not be a single document) collects information about the child's custody, history and condition. It includes,

- a copy of the child's birth certificate, or secondary evidence of the child's age.
- a copy of the irrevocable consent(s) signed by the legal custodian(s), and any other individual or entity who must consent to the child's adoption,
- a statement, signed under penalty of perjury under U.S. law by the primary provider, certifying that the report is a true, correct, and complete copy of the report obtained from the Central Authority of the Convention country, and
- the child's background information about the child's medical and social history.

Additionally, Part 3, Items #16-17, collects information on any contact with the child prior to filing the I-800 form with the USCIS and the legitimacy of the contact.

Finally, Part 3, Items #18-19, enforce the restriction against adopting the child prior to USCIS authorization that the adoption will comply with US law.

All of these items are designed to ensure (under U.S. and foreign law) that the child is legally available for adoption and that any contact by the PAP is authorized. Both of these conditions help prevent child buying.

IFS Procedures Against Child Buying

In order to ensure the effective monitoring of IFS's prohibition against child buying (in accordance with 22 CFR 96.36(b)), IFS will take the following steps.

1. Require that employees, staff and agents sign a statement acknowledging and understanding the prohibition.
2. Include in the client contract a statement of this policy.
3. Monitor the financial transactions of IFS for any aberration in fees that may indicate child buying.

4. Reinforce through regular training of it's employees, staff and agents the importance of this policy.
5. Monitor national and international sources via the internet and other publications on an ongoing basis (to be reviewed monthly) that may identify individuals, countries and trends where child buying is a potential for concern.
6. Seek feedback from other parties, such as adoptive families, orphanage personnel and government officials, concerning child buying practices.

These methods will develop and change over time as applied to particular countries. New approaches and insights will be gained and applied as a result of following these procedures.

Corruption is endemic in certain societies.¹⁶ Nonetheless, IFS will apply due diligence to prohibit child buying.

¹ United Nations Convention on the Rights of the Child, Article 35

² http://en.wikipedia.org/wiki/Child_trafficking, accessed 6/18/08.

³ Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption.

⁴ http://www.travel.state.gov/family/adoption/country/country_361.html, accessed 6/18/08.

⁵ http://news.google.com/archivesearch?ie=UTF-8&oe=utf-8&rls=org.mozilla:en-US:official&client=firefox-a&q=Cambodia+suspend+adoptions&as_ldate=2002&as_hdate=2002&um=1&scoring=t&sa=X&oi=archive&ct=title, accessed on 6/18/08.

⁶ <http://www.cnn.com/2008/US/05/28/international.adoptions>, accessed 6/18/08.

⁷ <http://www.chron.com/disp/story.mpl/world/5843187.html>, accessed 6/18/08.

⁸ http://vietnam.usembassy.gov/irreg_adoptions042508.html, accessed 6/18/08.

⁹ <http://www.iht.com/articles/2008/04/28/asia/vietnam.php>, accessed 6/18/08.

¹⁰ <http://jcics.org/Vietnam.htm>, accessed 6/18/08.

¹¹ Joint Council on International Children's Services, "A Child's Right Campaign for Vietnam, Recommendations," no date.

¹² Joint Council on International Children's Services, "Joint Council Standards of Practice for Intercountry Adoption in Vietnam, "March 1, 2008.

¹³ 22CFR96, Accreditation of Agencies and Approval of Persons under the Intercountry Adoption Act 2000 (IAA), Federal Register, Vol 71, No. 31, February 15, 2006.

¹⁴ Ibid.

¹⁵ <http://www.uscis.gov/forms>, accessed 6/19/08.

¹⁶ <http://www.transparency.org/publications/gcr>, accessed 6/18/08.