

**Comments on Department of Homeland Security
Regulations: Classification of Aliens
as Children of United States Citizens
Based on Intercountry Adoptions
Under the Hague Convention**

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RE: Comments on Department of Homeland Security Regulations: Classification of
Aliens as Children of United States Citizens Based on Intercountry Adoptions
Under the Hague Convention
DHS Docket No. USCIS-2007-0008

INTRODUCTION

Ethica is a nonprofit education, assistance, and advocacy group, which seeks to be an independent voice for ethical adoption practices worldwide. In order to maintain our impartiality, *Ethica* does not accept monetary donations from agencies or other child-placing entities, nor are any of our managing Board of Directors currently affiliated with adoption agencies. *Ethica* strives to develop organizational policy and recommendations based solely on the basic ethical principles that underscore best practices in adoption and speak to the best interests of children.

Ethica believes that ethical adoption services must include the full panoply of services to *all* members of the adoption triad. Such services include: family preservation efforts; birth family counseling and advocacy; comprehensive pre-adoption training for adoptive parents; ethical placement practices; post-adoption services, including disruption assistance; and fulfillment of lifelong responsibilities to adoptees and their families. Many of *Ethica*'s beliefs are embodied in the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (the Convention). We welcome the opportunity to comment on the interim regulations necessary for ratifying the Convention. These interim regulations (1) establish new administrative procedures for the immigration of children who are habitually resident in Convention countries

and who are adopted by U.S. citizens; and (2) amend DHS regulations on the immigration of adopted children to reflect the changes necessary to ensure full compliance with the Convention.

We welcome the several provisions of the regulations that will improve intercountry adoption practices. However, we are alarmed at the provisions relating to permissible expenses that legitimize coercive and unethical adoption practices. It is our belief that, as written, the regulations will actually serve to worsen intercountry adoption practices in Convention countries. Without modification, the regulations will cause a perverse result--the proliferation of the precise illegal and unethical activities surrounding child buying that the Hague Convention was designed to curb. By legitimizing coercive activity, these regulations are a grave disservice to children and families. To the extent that DHS does not modify Section 204.304(b), *Ethica's* comments will serve as a record of how the DHS and Department of State rendered the mandates of the Convention and the IAA against child buying utterly ineffective

COMMENTS

A. POSITIVE PROVISIONS OF THE REGULATIONS

Ethica welcomes the following positive provisions of the regulations, all of which require more rigorous scrutiny of prospective adoptive families to help ensure child placements are appropriate:

- The provision requiring identification of additional adult members of the prospective adoptive parent's household has been broadened to include "any person who does not live in the home but whose regular presence in the home is relevant to the suitability of the prospective adoptive parents as the parents of a Convention adoptee." § 204.301.

- The requirement that each applicant and any additional household member disclose each and every arrest or conviction, even if it has been erased, dismissed, expunged, or ameliorated in any other way. § 204.311(d).
- The additional requirements placed on home study preparers, including the following:
 - The home study preparer must certify that he or she advised the prospective adoptive parent(s) of the duty to disclose each and every arrest record or conviction. § 204.311(f)
 - The home study preparer must sign the home study under penalty of perjury. § 204.311(f)
 - The home study must state specifically when and where the interviews and visits of prospective adoptive parent(s) or additional adult household members took place. § 204.311(g)
 - The home study preparer must check the child abuse registries for any state or country in which the prospective adoptive parent(s) or additional adult household members have lived since the age of 18. § 204.311(i)(1)
- The detailed arrangements allowing for the early submission of petitions for children who are approaching the age of sixteen. § 204.313 (c).

In addition, *Ethica* applauds the new rule of Section 204(d)(2)(vii) permitting children who have already been brought to the United States, for example, for emergency medical treatment, generally to continue to be considered habitually resident in the Convention country. Thus, a child who is already present in the United States – as a parolee, nonimmigrant or in an unlawful status – may still have a Form I-800 approved by USCIS without the need for the child to travel back to the Convention country, as long as such action is permitted by the Central Authority of the other Convention country. *Ethica* urges that this hardship be eased for children from non-Convention countries as well.

At the same time, we note that without careful monitoring, this very provision could be used to circumvent the normal visa process. *Ethica* would, therefore, suggest that provisions be made to monitor the number of medical visa applications from Convention countries to determine if this provision is being used in a manner contrary to its intended purpose.

B. SIGNIFICANT WEAKNESSES AND AREAS OF CONCERN

1. Payment of Expenses in Connection With Adoption

Article 4, paragraphs (c)(3) and (d)(4) of the Convention preclude inducing any consent to adoption “by payment of compensation of any kind.” Section 404 of the Intercountry Adoption Act provides for civil and criminal penalties for any person who “offers, gives, solicits, or accepts inducement by way of compensation, intended to influence or affect in the United States or a foreign country . . . the relinquishment of parental rights or the giving of parental consent relating to the adoption of a child in a case subject to the Convention.” New Section 204.304(a) reflects these mandates as follows:

The decision of a parent or other custodian to release a child for adoption must be a free act for the adoption to be valid. And payment or other consideration, no matter how small, will lead to denial of the Form I-800 if the evidence of record establishes that the payment or other consideration was given specifically to induce the child’s release.

Notwithstanding the clear mandates of the Convention and the IAA above, section 204.304(b) creates an exception so large that it swallows the rule. Like section 96.36 of the final Hague regulations on intercountry adoption, Section 204.304(b) broadens the range of permissible payments to birth parents far beyond the more restrictive parameters of the current Immigration and Nationalities Act (INA) Regulations, whose provisions currently govern most visa determinations in intercountry adoption. Section 204.3(14)(i) of the INA Regulations permits only

“reasonable payments for necessary activities such as administrative, court, legal, translation and/or medical services *related to the adoption proceedings.*” [emphasis added]. On the other hand, section 204.304(b) of the Regulations allows payments to birth parents and others for a much broader range of services including payments for locating a child for adoption; counseling services for a parent or a child for a reasonable time before and after the child’s placement for adoption; expenses, in an amount commensurate with the living standards in the country of the child’s habitual residence, for the care of the birth mother while pregnant and immediately following the birth of the child; and “any other service” the payment of which the officer finds, on the basis of the facts of the case, was “reasonably necessary.”

In countries where families often live on less than a dollar a day, the simple provision of nine months of “living expenses” can in itself be highly coercive. The expansion of permissible payments combined with the difficulty of proving inducement (which requires rarely available direct evidence and/or an admission of guilt) is virtually certain to create an increase in child trafficking. In short, Section 204.304(b) legalizes and exports the troubling abuses present in international adoption from Guatemala to the rest of the world.

Ethica’s objections to Section 204.304(b) listed below illustrate how the section eviscerates the mandates against child buying. To the extent that DHS does not modify Section 204.304(b), *Ethica’s* comments will serve as a record as to how the DHS (and the Department of State through the Final Hague Regulations, Section 96.36) rendered the mandates of the Convention and the IAA against child buying utterly ineffective.

a. It is inapposite to base “reasonable” expenses on U.S. standards

Section 204.304(b) identifies the types of appropriate payments to birth families and intermediaries. According to the DHS, Section 204.304(b) is modeled on the 1994 edition of the Uniform Adoption Act, as recommended by the National Conference of Commissioners on

Uniform State Laws (NCCUSL). The recommendations set forth by the NCCUSL were intended to comport with extant practices and norms in the United States. It goes without saying that these practices and norms are likely to differ sharply from those of sending countries, many of which are impoverished to a degree incomprehensible to a U.S. resident. In view of such vast economic disparities it makes little sense to pattern standards for countries of origin on recommendations made for U.S. states.

Ethica believes that birth parents living in other countries should be provided protections that are at least equal to those of birth parents in the United States. For example, forty-nine of the fifty states have specific provisions protecting birth parents by prohibiting adoption service providers and adoptive parents from paying expenses on the condition that the parent(s) actually place the child. Foreign birth parents do not have this protection. Absent such protections, child placement would become a contractual relationship, not unlike other commercial transactions, in which the consideration for placement is payment. The payment of expenses to birth parents is an alien concept in virtually every other country except the United States. Therefore, it is unlikely that foreign countries would have reason to create laws prohibiting the payment of expenses to birth parents. Once such payments become commonplace in a country, it will become virtually impossible to adequately control them, as the experience in Guatemala shows.¹ Competition for available children will increase and payments will rise, providing incentives for not only the placement of children, but also for the intentional conception of children to place for adoption. As a result, through this provision, the DHS has virtually guaranteed that a significant amount of money will be paid to every parent relinquishing a child for adoption.

Ethica believes that child-buying concerns are so pervasive and so harmful to the integrity of the adoption process that the best practice would be to prohibit the payment of any expenses not *directly* related to the adoption.² If, however, the determination remains that other

¹ Recent reports indicate that it is common for parents to receive almost \$2,000 U.S.D or more for “expenses” in a country where indigenous families often live on less than \$3 USD per day.

² Such as those currently allowed under the INA.

types of expenses are to be allowed, then *Ethica* believes that significantly greater controls should exist with regard to such expenses, as outlined below.

Ethica has received reports from several countries (India, Guatemala, Nepal) where women are required to pay back expenses (e.g., delivery expenses, newborn care) if they choose not to relinquish. In countries where women are living in impoverished conditions, such tactics can only be viewed as highly coercive. It is important to note that a majority of states in the United States have laws stipulating that the payment of expenses cannot obligate the parent to place the child for adoption. This important protection for birth parents enables them to retain the *choice* over placement regardless of their economic circumstances at the time of birth.

While *Ethica* believes that payment of non-adoption-related expenses should not be allowed, if such expenses are allowed, then this section should stipulate:

- That *cash* payments to birth parents for any reason are prohibited. At a minimum, if cash payments are allowed, then inducement should be presumed and an investigation should be automatically triggered.
- That payments for locating a child for adoption should be strictly prohibited.
- That medical, counseling, legal, or child welfare services to birth parents must be delivered by third parties who do not benefit financially from the decision to place the child for adoption, and that such third-party providers may not rebate or provide anything of value to birth families or to adoption service providers.
- That the provision of services should not obligate a parent to place the child for adoption.

- That services should be provided to any birth parent who seeks such services without regard to whether the parent has a plan to place the child for adoption.
- That any third party which provides services to birth parents should do so in a transparent manner and that its operation should be open to inspection by local or international authorities.
- That adoptive parents should not be individually charged for such expenses.
- That DHS should develop a policy of the amount and type of payments allowable in each country with a maximum allowed based on the conditions in that country. For example, if the child is born in a hospital where delivery costs \$5 U.S.D, only \$5 USD should be allowed as an expense payment.

In addition, the “catch-all” provision of Section 204.304(b)(9) should be removed in order to help provide clear limits on the types of payments that are considered “reasonable.”

b. Section 204.304(b) privileges international adoption at the expense of local alternatives in contravention of the subsidiarity principles of the Convention

International human rights organizations have unanimously criticized the payments of huge (by sending country standards) international adoption fees on the grounds that these fees create incentives to place children for adoption who might have been able to remain with their families, had aid not been conditioned on placement of the child. Indeed, *Ethica* believes that as long as the market for international adoption is significantly more lucrative for in-country providers, there is little reason to encourage the development of social services, child welfare, and domestic adoption infrastructures, all of which are granted higher priority in child placement under the Act than international adoption. Realistically, absent the influx of first world capital that

attends international adoption, it is unlikely that services for which payment is permitted under Section 204.304(b) would be available to the same degree to parents who choose not to relinquish, or to relinquish to local guardians or adopters. The end result, then, is that when unethical agencies and facilitators and desperate parents are faced with the choice between money that international adoption brings and family preservation or other local alternatives, international adoption will win out. Thus, the economic realities of international adoption instantly create an unlevel playing field, and tip the Convention's subsidiarity principle on its head.

c. Allowing payments to locate children for adoption equates to child trafficking

Section 204.304(b)(2) permits payments for "expenses incurred in locating a child for adoption." It is unconscionable and inexplicable that the framers of Section 204.304(b)(2) would essentially legalize payments that have been so problematic in some sending countries, such as those to *buscadoras/jaladores* in Guatemala and "drivers" in Cambodia.

Indeed, recognizing the potential for coercion and undue influence inherent in permitting payment for locating children for adoption, many U.S. states have enacted statutes to control the use of intermediaries or facilitators. Included in the laws of many states are prohibitions and, in some case, criminal penalties against persons who "locate" or solicit children for adoption. For example, Florida prohibits "any fee or expense that constitutes payment for locating a minor for adoption." Oregon law stipulates that "No person shall charge, accept or pay or offer to charge, accept or pay a fee for locating a minor child for adoption or for locating another person to adopt a minor child."

Ethica is deeply disturbed that payments for locating children are sanctioned by the DHS. International adoption offers child locators an unparalleled opportunity to earn what amount to commissions, the amounts of which are likely to be greatly in excess of the average per capita incomes in the sending country. The potential to earn large incomes from international adoption

activities in turn greatly increases the risk that in-country facilitators will have significant incentives to solicit large numbers of children (who may or may not be orphans) for international adoption. Under such circumstances, the number of “manufactured” or “paper” orphans is almost certain to rise.

d. Measuring the permissibility of expenses by local living standards does not take into account pervasive and exploitative local practices

Section 204.304(b)(5) permits “expenses, in an amount commensurate with the living standards in the country of the child’s habitual residence, for the care of the birth mother while pregnant and immediately following the birth of the child.” However, historically, child buying has taken the form of often shockingly small payments of cash or even food, characterized as humanitarian aid, to birth parents. It is not uncommon to hear of children sold for a few dollars or a bag of rice by parents whose economic circumstances few could ever fathom. Even within their own countries such payments would be much lower than the living standards of that country. Adoption service providers should be encouraged to develop programs to assist such families, not create incentives for families to place children they would otherwise choose to raise.

e. The “catch all” provision of Section 204.304(b)(9) lacks specificity and thus, opens the door to a wide number of additional permissible payments

Section 204.304(b)(9) permits as a service allowing for payment, “any other service the payment for which the officer finds, on the basis of the facts of the case, was reasonably necessary.” Thus, in lieu of providing clear standards to officers, Section 204.304(b)(9) provides a loophole within a loophole and allows an officer to allow any other payment deemed reasonably necessary (without providing any examples). Allowing officers to retain discretion over what payments are “reasonably necessary” potentially permits a “sky’s the limit” approach and

provides ample opportunity to bless a huge variety of payments to birth parents that have the effect of inducing those parents to relinquish their children for adoption.

Finally, and in the absence of other reforms, most importantly, the preamble states that the new Form I-800 will require the petitioner to disclose the fees and other expenses paid in relation to the adoption. However, this requirement is not listed as a requirement for Form I-800 in Section 204.313. *Ethica* recommends that Section 204.313 be modified to make explicit that petitioners disclose both official and “unofficial” fees and other expenses paid in relation to the adoption broken down as follows (1) date of payment, (2) purpose of payment, (3) the payee, (4) the form of payment (e.g., wire transfer, cash). The disclosure by the petitioner should be made under penalty of perjury and should be supplemented at the time the Form I-800 is finally approved. *Ethica* believes that such provisions will actually *protect* petitioners from unethical adoption service providers, intermediaries or officials who demand the payments of additional fees while the petitioners are in the foreign country. In addition to the disclosure by the petitioner, Section 204.313 should require adoption service providers to detail where the lump sum fees paid by the petitioners are expended. This statement should also be made under penalty of perjury and should be supplemented at the time the Form I-800 is finally approved.

It should be noted that such financial disclosures are commonly required in the United States for the finalization of an adoption. Therefore, this requirement is not unduly burdensome to either adoptive parents or adoption service providers. Examples of such required disclosures are available.

Ethica believes such disclosures will create greater transparency in the payments made in connection with adoption; provide statistical data; provide data which will aid investigations by DOS and USCIS; and emphasize to petitioners and adoption service providers their obligations not to make payments as an inducement to adoption.

2. Disclosure of all dependents living with applicant(s)

Section 204.311(c) requires identification by name, alien registration number (if any), and date of birth for any additional adult members of the household. Section 204.311(c) should be amended to require such information for ALL members of the applicant's household, including any dependents living with the applicant. Even when a Convention country does not have an explicit rule about family size, some competent authorities (e.g., courts entertaining adoption and guardianship applications) consider family size a factor in determining whether a custody or adoption placement is appropriate for the child. Because of this consideration, *Ethica* is aware that some adoption service providers and home study preparers encourage applicants to omit mention of some or all of the applicant's dependents. Affirmatively requiring disclosure of all existing dependents in an applicant's household for the initial home study makes sense given that Section 204.311(u)(ii) requires a home study update or amendment upon the addition of one or more children in the applicant's home, whether through adoption or foster care, birth, or any other means, and that Section 204.311(u)(iii) requires a home study update or amendment upon the addition of other dependents to the family prior to the prospective child's immigration into the U.S.

3. Disclosure of home studies in process

According to the preamble, applicants must disclose any prior home study process that was initiated but that was terminated without a formal home study process having been completed. Section 204.311(c)(16) and (n) should be clarified to also include disclosure of all home studies that were initiated regardless of the final disposition. For example, any concurrent home study processes that are "in process" with respect to the prospective adoption from a non-Convention country (but have not been terminated) should also be disclosed.

4. Investigations “on the basis of specific facts”

While *Ethica* agrees that it might not be necessary to “require” an investigation in every case, we have strong concerns that investigations are only permitted if the officer determines “on the basis of specific facts” that an investigation is warranted. Field investigations elicit swift reactions from not only adoptive parents, but their adoption service providers and Congressional representatives. It is not uncommon for officers to receive significant pressure to stop investigating, or to receive demands for the basis of the investigation—even under current standards when an investigation is required in every case. *Ethica* is concerned that by permitting investigations only if an officer determines one is warranted “on the basis of specific facts” § 204.313 (f), the Department’s investigatory powers will be limited by immediate demands for specific facts each time an investigation commences. It is possible that an officer will have concerns about a particular case or set of cases because of patterns seen over the course of time, or because of information received by the officer from local authorities or others. It is unwise to hamstring DHS and Consular officers from investigating by requiring that they be able to articulate specific facts to justify any investigation the Service believes necessary to establish that a child is really an orphan.

5. Investigations where original consents are not provided

The preamble notes that new Section 204.313(f) does not require an investigation in every case and that “USCIS anticipates that, as a general principle, it will accept the Central Authority’s certification that the consents necessary to make the child eligible for adoption are valid.” New 8 CFR 204.313(f) does, however, permit an investigation, “if the USCIS officer or Department of State officer believes that an investigation is necessary to the proper adjudication of the case.” In addition Section 204.313(d)(4)(ii) requires Form I-800 to include a copy of

irrevocable consent(s), unless the law of the country provides identities may not be disclosed as long as Central authority certifies required documents exist.

While an investigation should not be required in every case, we urge USCIS to acknowledge that an investigation is likelier to be warranted when copies of the original consents have not been supplied with Form I-800, either because the child was supposedly abandoned or due to the provisions of Section 204.313(d)(4)(ii). USCIS should not rely alone on the Central Authority's certification as to the validity of the consents, particularly when, as is most often the case, the Central Authority has not interviewed the birthparents directly and has not witnessed the signatures on the consents.

6. Written documents to prove abandonment

With respect to the definition of "abandonment," Section 204.301 provides that if a written document is signed by the parent(s) to prove abandonment, the document must meet a number of requirements including: (1) the document must specify whether the person was able to read and understand the language in which the document was written and if not; (2) the document must be accompanied by a declaration by an individual establishing that the individual is competent to translate the document into a language the parent understands and that the individual read and explained the document on the date and time indicated, and; (3) the document requires a certification (if signed by an officer or employee of the Central Authority) or under penalty of perjury under United States law. However, the definition of abandonment states that a written document is not necessary to prove abandonment.

The definition of abandonment should be amended to provide that a written document is necessary to prove abandonment in the circumstances described in paragraphs (4) (the parent(s) entrusted the child to a third party for custodial care in anticipation of, or preparation for, adoption) and (5) (the parent(s) entrusted the child to an orphanage and did not intend the placement to be

merely temporary with the intention of retaining the parent-child relationship, but that the parent(s) entrusted the child permanently and unconditionally to an orphanage). In cases where parent(s) have entrusted the care of their children to a third party or orphanage and do not intend that care to be temporary, there is no reason why a written document cannot be obtained from the parent(s). Requiring a written document to prove abandonment is important to demonstrate the parent(s)' intent to permanently forsake care of the child and to distinguish the common cases when parents are duped into thinking the institution is providing only temporary care for the child when, in fact, the child is sent abroad for adoption.

7. Approval of Form I-800 after custody or adoption of the child in good faith

New Section 204.309(b)(1) requires the denial of a Form I-800 if the adoptive parents adopted the child, or obtained custody of the child, before the provisional approval of the Form I-800. In order to purportedly ease a hardship in cases in which the prospective adoptive parent(s) in good faith, adopted the child before beginning the Convention process, Section 204.309(b)(1) provides that Form I-800 may still be approved if the competent authority in the country of the child's habitual residence voids the adoption or custody order. The prospective adoptive parent(s) would then adopt the child again, after complying with the Convention procedures, and after provisional approval of the Form I-800. The prospective adoptive parent(s) must have the prior adoption or custody order voided before the prospective adoptive parent may file the Form I-800.

In other words, Section 204.309(b)(1) will force the adoptive parents to disrupt the adoption or custody of a child in order to have a Form I-800 provisionally approved and then must re-obtain adoption or custody of that child when the adoptive parents have demonstrated good faith.

While *Ethica* acknowledges that the Convention requires that an *adoption* cannot take place until the receiving country has determined that the parents are eligible and suited to adopt,

nothing in the Convention requires that a *custody order* cannot be granted prior to this determination. While it would generally be good practice to require approval prior to the grant of custody, Ethica believes that some discretion should be allowed in the Convention to address issues where a custody order was signed prior to this determination, when the prospective adoptive parents did so unwittingly and in good faith.

Section 204.309(b)(1), as currently drafted, serves to create significant hardship as well as potential additional delays of weeks and months before parents can obtain final custody of the child. Parents will encounter tremendous difficulty in requesting that a previous custody order be voided solely for purposes of having Form I-800 provisionally approved and then having to re-file their cases. Instead of forcing parents to disrupt the custody of the child, Section 204.309(b)(1) should be amended to provide that in cases of good faith where parents have obtained a custody order before the Form I-800 is approved, the officer in charge has discretion to allow the approval of the I-800.

8. Consent of father before birth of the child

Section 204.300 allows that a father's consent can be given prior to the birth of a child where the laws of the country allow. While Ethica acknowledges that the Convention only provides that the mother's consent must be given after birth, Ethica strongly encourages the Department to refrain from treating fathers as second class parents who are worthy of less protection and consideration than that granted to mothers. Indeed, the regulations require that any guardian other than the father must give consent after birth—with no explanation as to why fathers are considered less important after birth than say, the orphanage director who has custody. The Explanatory report of the Convention notes that it was concern about unmarried mothers that warranted the inclusion of the provision about consents after birth. However, it must be acknowledged that under U.S. immigration law, fathers, even unmarried fathers, have rights and must consent to the adoption of a child. Much attention has been given in recent years to the

vast disparities between the treatment of mothers and fathers under U.S. state adoption laws—a few of which allow fathers to consent before birth. These provisions are strongly condemned by birth parent advocates as they imply that fathers have less connection or concern for their children than mothers do. If a father's rights are equal after birth, and a mother's consent occurs after birth, then fathers should be given the same right to bond with the child after birth and consider whether they want to place the child for adoption. Even if the laws of a foreign country allow consent before birth, the United States should provide for the equal treatment of the child's parents. Provisions such as those in 204.300 could encourage countries who don't have policies to enact bad ones by following the example of the U.S. It is wise to refrain from exporting problematic and disturbing U.S. policies abroad.

9. Disparities on parents being incapable of providing proper care

The regulations specify that if consent to a child's adoption is given by both of the child's birth parents, the prospective adoptive parents must establish that the birth parents are incapable of providing proper care. § 204.313. This provision mirrors the provision of 8 CFR § 204.3, which requires this same showing for a sole or surviving parent. Inexplicably, the new regulation applies only to situations where both parents consent. The Department does not elucidate why the regulations remove this provision from applicability to single parents. Ethica would appreciate clarification on the reasoning behind this disparity.

10. I-800 will not be denied solely because the parents do not meet the laws of the country of origin

Finally, Ethica offers the following comments on the Department's determination that it will not deny the I-800A solely on the basis that the parents do not meet the requirements of the foreign country's law. § 204.312. While in principle it makes sense to allow the country of origin to determine how to apply its laws, in practice this provision will encourage the continued problems

of corruption and bribery that have plagued adoption. If the foreign country found the law important enough to enact, and if the Convention establishes cooperation between two countries to encourage protection of children and families, it seems inimical to the idea of setting standards to allow adoptive parents and their representatives to request that laws be sidestepped. Indeed, don't the final Hague regulations require that agencies operate within the laws of the foreign country?

Allowing parents to apply to countries whose requirements they do not meet will increase the bad practices currently occurring where bribes are paid and special requests are made. Encouraging countries to break their own laws flouts the very purposes of the Convention. If a Convention country goes to the trouble of communicating its standards to the U.S., the U.S. should respect those laws and refuse to allow any parents who do not meet such standards to be approved for that country. In fact, the Convention requires that the receiving country ensure that the prospective adoptive parents are "eligible to adopt," which means that the parents "fulfill all legal conditions." Article 5; and Explanatory Report Para. 180. It appears to be a violation of the U.S. responsibilities under the Convention, therefore, to issue an I-800A granting approval of the prospective parents if they do not meet the country's legal requirements.

Ethica wishes to thank the Department of Homeland Security for its consideration of these comments and hopes that they prove to be of value as the Department drafts its final regulations.