

Comments on Proposed Regulations to the Hague Intercountry Adoption Act:
8 CFR Parts 103, 204, 213a et al.
Classification of Aliens as Children of
United States Citizens Based on
Intercountry Adoptions Under the Hague
Convention; Interim Rule
DHS Docket No. USCIS-2007-0008

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INTRODUCTION/OVERVIEW

Parents for Ethical Adoption reform (PEAR) is a grassroots group of adoptive and prospective adoptive parents, formed in the summer of 2007, who have come together to discuss the lack of a unified, respected voice for adoptive families. Our board consists of adoptive parents who have either personally witnessed corrupt practices or have been repeatedly contacted by those who have. We believe that the existing system needs strong reforms because it does not represent the best interest of the people most impacted by the system: the children and their families.

The Convention adopts the best interest of the child as its legal standard, a standard recognized internationally and which places the focus on the welfare of the child. This concept needs to remain paramount in any legislation, rule or regulation promulgated under the Hague Intercountry adoption act.

PEAR believes that the current system for International Adoption (IA) in the United States is permeated with corruption caused by financial incentives to find children for prospective parents. As long as our system remains focused on finding children for prospective parents rather than finding parents for children in need of a home, the corruption will continue.

The situations in Nepal, Cambodia, Guatemala and Vietnam where children are actively sought for adopting parents is a prime example of the corrupting influence of US dollars in financially strapped third world countries. The buscadoras in Guatemala, the sudden increases of abandoned babies in certain provinces of Vietnam, and the required cash-only donations to orphanage directors in Vietnam, all point to the problems of financial incentive for the finding of children. The institution of

the Hague principles was intended to prevent the very acts that are currently threatening the situations in these and other sending countries. Until real meaningful adoption reform is enacted in our country, corrupt practices will continue to grow and prosper.

A thorough reading of the proposed regulations for the processing of I800s and issuance of a US immigration visa shows that the DHS/USCIS have incorporated many provisions to allow checks and controls to fees involved in International Adoption that could lead to the elimination of questionable relinquishments and illegal/unethical financial incentives for locating and placing children. PEAR applauds the Regulations in regards to this matter, especially Section 204.304(a) on prohibited payments.

However, it is also the opinion of PEAR that the proposed Hague regulations offer significant loopholes for continuing corrupt practices and large financial incentives. PEAR respectfully submits our comments to these sections of the regulations, found in Section 204.304 Improper inducement prohibited. Our comments focus both on the determination of reasonable costs and with the permissible fees afforded in section (b).

COMMENTS:

1. Definition of reasonable costs:

Sec. 204.304 provides:

(b) Permissible payments. Paragraph (a) of this section does not prohibit an applicant/petitioner, or an individual or entity acting on behalf of an applicant/petitioner, from paying the reasonable costs incurred for the services designated in this paragraph. A payment is not reasonable if it is prohibited under the law of the country in which the payment is made or if the amount of the payment is not commensurate with the costs for professional and other services in the country in which any particular service is provided.

The first definition of reasonableness, ie the payment is not illegal in the country in which it is made, seems self-evident. PEAR would also like to see this amended to read: ***“A payment is not reasonable if it is prohibited under the laws of the United States and of the country in which the payment is made”***. We feel it is vital that the laws of the sending and receiving country be honored.

PEAR has additional concerns over the potential abuse and manipulation of this section. It would be possible under the wording of this section for unethical foreign service providers to set up accounts or businesses in a third country where prospective parents or agencies would be directed to make payment for services, even if such payments were illegal in the sending country. This would technically be allowed under the regulations.

The second definition of unreasonableness is: “the amount of the payment is not commensurate with the costs for professional and other services in the country in which any particular service is provided” . While on the surface this seems appropriate, it brings about it’s own set of concerns and potential problems. PEAR believes this section leaves too much discretionary room in review and determinations of “reasonableness”. It creates both an undue burden on overworked and understaffed USCIS offices in sending countries and opens the door for unethical manipulation of fees in the sending countries.

It is PEAR’s opinion that further guidance needs to be given to USCIS offices in foreign countries in how to determine whether a fee is reasonable within that particular country. Some services may be translatable to similar services within the country, but others may not. For example: legal fees charged to sending country citizens may be easy to determine, but it may be more difficult to determine if the costs involved in “locating a child” is a reasonable since there may be no corresponding service provided to citizens of the country with which the USCIS can easily compare.

PEAR respectfully requests that further guidance on this provision be provided in the regulations or the provision should be dropped from the final version.

2. Permissible fees:

A. Expenses incurred in locating a child for adoption:

Sec. 204.304 (b)(2) provides...

“The permissible services are: ...

(2) Expenses incurred in locating a child for adoption;”

It is PEAR’s belief that this provision is too broad in its scope and needs further definition of allowable expenses in locating a child before it can be reasonably followed and enforced. Whose expenses are covered by this provision? If an employee of an adoption agency travels to country “A” via first class air and stays in a luxury hotel, dining in four star restaurants and visiting orphanages and government officials via chauffeured limousine will this be covered when someone living in the country could be hired to do the same thing at one third the cost? Will social welfare agencies be reimbursed for all expenses leading to the termination of a parent’s right thus freeing a child for adoption? Will “finders” be permitted to be paid to scour the countryside in search of expectant mothers who may be convinced to relinquish a child at an prospective adoptive parent’s expense? What if it takes weeks or months to locate a child - is this a legitimate increased expense? This would imply that as adoptable children become more scarce higher fees to procure them may become legitimate? Part of the current crisis in adoption ethics is the reality of bidding wars over children. This new regulation would seem not only to allow this, but to encourage competitive financial practices. The potential abuses of this provision are fathom less.

Additionally, this provision is in conflict with the Hague Convention provisions that children should be referred through a central authority. There should be no one actively looking for adoptable children outside of the sending country's social welfare system. Either a child is registered as adoptable internationally or they are not. Children should not be recruited into the system for the purpose of international adoption. Granting financial incentives to people to actively seek out children is unethical and leads to corrupt practices.

This proposed regulation is also in conflict with the provisions of 203.304(a) prohibiting payments which directly or indirectly induce or influence the decision of a person to place a child for adoption.

PEAR respectfully requests that this provision be eliminated in the final regulations.

B. Medical, hospital, nursing, pharmaceutical, travel, or other similar expenses:

Section 204.304 (b)(2) provides:

"The permissible services are: ...

(3) Medical, hospital, nursing, pharmaceutical, travel, or other similar expenses incurred by a mother or her child in connection with the birth or any illness of the child;

It is the position of PEAR that any payment to first mothers is inherently coercive and unethical. These payments are illegal or severely restricted in many US states* for exactly these reasons. This provision leaves the door wide open to payments to impoverished women for their children. Payments which can later be declared to be the sum total of the first families costs during pregnancy, delivery and initial care of the child. Will our consulates in the sending countries have the means to verify if specified expenses were actually paid to a medical facility or not? Will families of origin be induced to relinquish children to adoption in order to pay medical bills for birth, pregnancy or a child's illness that they cannot afford?

It is also important to note that most IA cases, especially when occurring under Hague principles, are not equivalent to US private infant adoption. The children involved in Hague IA are usually part of the sending country's social welfare system. They are either true orphans (having no living parents), relinquished, abandoned, or removed from custody of first family for abuse/neglect. The referrals of these children come months to years after they have been relinquished, abandoned or removed from care of their family of origin.

As for the allowable expenses of illnesses of a child, it is PEAR's opinion that prospective adoptive parents should not be made to bear the expenses of their referred child's illness until such time as the child becomes legally theirs. If a family volunteers to pay the medical expenses of a referred child, we have no specific objection as long as it is voluntary and reasonable. It must be remembered at all times that these children are not the legal children of prospective parents.

In addition, this provision directly conflicts with Section 204.304(a) prohibiting any payment directly or indirectly inducing or influencing a person to relinquish or place a child for adoption.

PEAR respectfully requests that this provision with respect to the expenses of the birthmother and the medical expenses of a child prior to adoption be removed from the final version of the regulations.

*see Childwelfare Information Gateway:

http://www.childwelfare.gov/systemwide/laws_policies/statutes/expenses.cfm for a detailed listing of state laws.

C. Living expenses of birthmother while pregnant and immediately following the birth of the child.

Section 204.304 (b)(5) provides:

“The permissible services are: ...

5) 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;

For all of the reasons stated in the previous section with respect to medical expenses, PEAR objects to the inclusion of these expenses as permissible and respectfully requests their deletion from the final regulations.

In addition, it is our position that this provision may encourage serial pregnancies and relinquishments as a means of regular financial support of a woman or her family. This provision is direct conflict with 203.304(a).

PEAR respectfully requests that this provision with respect to the living expenses of the birthmother be removed from the final version of the regulations.

D. Legal expenses.

Section 204.304(b)(8) provides:

“The permissible services are: ...

(8) Legal services, court costs, and travel or other administrative expenses connected with an adoption, including any legal services performed for a parent who consents to the adoption of a child or relinquishes the child to an agency;

As stated in the two previous sections, PEAR views the payment by prospective adoptive parents of any expenses of expectant parents or first families prior to the adoption of the child as unethical. Prospective parents are not the legal parents or guardians of the child and should not be held financially responsible for the costs

involved in freeing a child for adoption. These payments are obligations of either the first family , the social welfare organizations of the sending country, or the central authority of the sending country. It is PEAR's stand that these types of payments are inherently coercive to the first family, prone to manipulation by service providers, and encouraging of a sense of entitlement to prospective parents that leads to making unethical and/or poorly thought out decisions.

PEAR respectfully request that this provision be eliminated in the final regulations.

E. Other necessary payments.

Section 204.304(b)(9) provides:

"The permissible services are: ...

(9) Any other service the payment for which the officer finds, on the basis of the facts of the case, was reasonably necessary ."

This section is perhaps the most concerning to PEAR. It provides too much discretionary power on behalf of the individual USCIS officers and opens the door for inconsistency, abuse and manipulation. Leaving each officer in charge of deciding whether a certain service or payment is necessary will lead to inconsistencies among offices and doubts by agencies and adoptive parents as to whether an expense covered in country "A" will be permissible at the USCIS office in country "B" or even within the same country depending on the officer reviewing the case. This section is far too broad and discretionary to follow with any certainty or enforce with any predictability.

If USCIS believes that some discretionary latitude may be needed to deal with exceptional cases, then we suggest the creation of a specific waiver to permit a particular unapproved expense which could be applied for as part of the visa process. Such application would be first approved by a consular field officer with final approval issued by a supervising office of USCIS.

PEAR highly recommends that this provision be deleted from the final regulations.

CONCLUSION:

PEAR believes that the regulations allowing the above proposed permissible fees creates numerous loopholes that will thwart the letter and intent of the Regulations to the Hague Inter-country Adoption Act. Without a closing of these loopholes, relinquishments will continue to be secured under questionable circumstances. These loopholes benefit those that identify and place the children at the very real expense of the child, the family of origin, as well as the adoptive family. The regulations in Section 203.304(b) conflict with section 203.304(a) and offer financial inducement for impoverished women and families to relinquish their children to adoption for financial gain. Additionally, they encourage improper competitive practices among agencies in obtaining children through the creation of financial

opportunity. PEAR strongly believes that the provisions we listed above are NOT in the best interests of the children nor do they meet the spirit of the governing standard adopted by the Hague and recognized internationally because they do not place the focus on the welfare of the child.

Children will be continue to be denied fundamental human rights protections as long as they are treated like chattel brokered to the highest bidder.

PEAR appreciates the Department granting us an opportunity to comment on the proposed regulations.

Respectfully Submitted,

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