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March 8, 2002

The Honorable James W. Ziglar
Commissioner
U.S. Immigration and Naturalization Service
425 Eye Street, N.W.
Washington D.C. 20536

Dear Commissioner Ziglar:

I am writing to you again in regard to the tragic situation affecting children and prospective adoptive families in Cambodia.

Let me first express my appreciation to you for your efforts to help resolve what has been a painful ordeal for all the children and families concerned. I am hopeful that the interim "humanitarian solution" you have put in place will help clear many pending cases, and that it will then be possible for U.S. and Cambodian officials to work together to develop a new cooperative relationship that will allow adoptions to resume under appropriate safeguards in the near term.

I appreciate the efforts that are being made by the Joint INS/DOS Task Force to rectify the situation. However, I am quite concerned that the criteria being developed by the Task Force as to what constitutes a "pending" or "pipeline" case may result in the denial of full and fair consideration to many children and families who deserve to have their cases adjudicated.

According to briefing materials provided to my office on March 1, 2002 (the Briefing Paper), the Task Force has worked closely with the Royal Government of Cambodia (RGC) "to identify cases where there is evidence of appropriate official action upon which a case could potentially be processed to conclusion."

The Briefing Paper further stated that the Task Force would concentrate initially on approximately 100 cases "in which the prospective adoptive parents and a Cambodian child had been officially matched prior to the December 21, 2001 announcement of a suspension in adoption processing."

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I can readily appreciate the wisdom of focusing on an initial group that has received an official match. From an administrative perspective, these cases present the most complete "paper trail" and are therefore the simplest to resolve.

On the other hand, the Briefing Paper appeared to recognize that these are not the only meritorious cases, promising that the Task Force would also be "examining additional cases to determine if they can also be considered for this special humanitarian initiative."

Unfortunately, it has begun to appear that these additional cases may be subjected to much the same requirements as those applied to the initial group. Families are being asked to provide documentation from the RGC authorities that an official match has been approved, and we are receiving indications that those who are unable to produce such documentation may be excluded from further consideration. This would mean that over 100 additional families who did everything they were supposed to do and were formally approved by the U.S. government to adopt in Cambodia would be forced to abandon the children they have already come to love.

To understand what is wrong with this approach, it may be helpful to review the typical process by which a family proceeds from its initial application to an official match.

1. The process begins with the family's completion of its home study and filing of form I-600A (Application for Advance Processing of Orphan Petition) with the INS. If the INS determines that the prospective adoptive parents are able to furnish proper care to an orphan as defined by U.S. law, the INS issues a notice on form I-171H (Notice of Favorable Determination Concerning Application for Advance Processing of Orphan Petition).
2. On or about the same day, the INS field office sends a cable ("Cable 37") or fax to U.S. consular officials in Cambodia, notifying them of the favorable determination.
3. The family (or the agency acting on its behalf) sends a dossier to the facilitator in Cambodia. The dossier includes a copy of the I-171H form and a power of attorney authorizing the facilitator to request and receive a letter of approval from the U.S. consulate.
4. Upon receipt of the dossier, the facilitator refers a child to the family and contacts the consulate to request the letter of approval.
5. The facilitator picks up the letter of approval and delivers it, together with the dossier, to the Ministry of Foreign Affairs (MOFA).

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6. MOFA reviews the documents and approves the adoptive family, sending a letter to the Ministry of Social Affairs (MOSALVY) stating that both the U.S. government and MOFA have approved the family to adopt.
7. MOSALVY officially matches the referred child with the family.

Should the Task Force consider only those families who have completed (or substantially completed) all of these steps, it will exclude a large number of families to whom the INS long ago issued I-171H approvals to adopt in Cambodia, but who never received an official match because the documents evidencing that approval were not transmitted to the RGC.

In some cases, the lack of an official match appears to have been due to the failure of INS field offices to send the cable. In other cases, it was due to the failure of the consulate to receive the cable. In still other cases, it was due to the failure or refusal of the consulate to issue the letter of approval. Whatever the cause, the refusal to consider these cases now would unfairly penalize these families for failures which were the responsibility of our government.

If an arbitrary line must be drawn, it seems to me that the proper place to draw it is at the point at which our government triggered the referral process by issuing an I-171H form approving a family's I-600A application to adopt in Cambodia (or, for those families who had initially been approved to adopt elsewhere, granting a transfer of the initial approval to Cambodia). While I recognize that a favorable determination at that stage does not guarantee that the orphan petition will ultimately be approved, the referral of an actual child is nevertheless the point at which the dream begins to become a reality for these families.

Having set the referral process in motion, our government has an obligation to see that notice of its action is properly conveyed. No family should be disqualified from consideration because the INS failed to transmit a cable; the consulate failed to receive it; or consular officials failed to issue a letter of approval in a timely manner when requested to do so.

Moreover, given the fact that INS field offices have continued to issue I-171H approvals for adoptions in Cambodia *even after the suspension was announced* on December 21, I believe that the Task Force has an obligation to consider *all* cases in which an I-171H was issued and a referral was made.

It is unfair and unreasonable for government agencies to toy with the hopes of U.S. citizens by generating expectations which they have no intention of fulfilling. Having

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knowingly continued to issue these approvals at the very time that it put the suspension in place, the INS cannot now simply wash its hands of these families. Once the Task Force has dealt with the first group of cases, it is incumbent upon them to do whatever is possible to bring the remaining cases to a satisfactory conclusion.

I very much hope that the Task Force will consider this approach. It may not be the easiest course. But it's the right thing to do.

Sincerely,

A handwritten signature in black ink, appearing to read "William D. Delahunt". The signature is written in a cursive, somewhat stylized font.

William D. Delahunt

cc: The Honorable Colin Powell