

BOTH ENDS BURNING
PAPER CHAINS



Report on U.S. Government Actions and the Impact of these Actions
on Nepal's Abandoned Children, 2010-present

**Written by Kelly Tillotson Dempsey
and co-authored by Chad Turner, Morgan Abbott,
Cassandra Capote, Brett Currier, Kat Gardzalla, Erica Kassman, and Alyse Young**

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This Report presents a single episode in the history of international adoptions, focusing exclusively on Nepal, though the facts set forth have been repeated in many other countries as well. Today, international adoption from Nepal is virtually nonexistent, and, for the United States, this can be traced to the actions of the United States Government and specifically the Department of State and to a lesser extent, U.S. Citizenship and Immigration Services (USCIS). This Report centers on the suspension of adoptions from Nepal in August 2010 and details the devastating effect that the Government's actions had on American families and vulnerable children who were directly impacted. It makes clear that the actions of the Department of State and USCIS need to be reviewed and changed so that American families seeking to adopt children in need, where ever they may reside, do not suffer the same harm as that caused in this case. Absent immediate and substantial change to U.S. Government policies in regards to international adoption, the Department of State and USCIS will simply continue unchecked in deciding when to suspend adoptions from a country, resulting in immeasurable harm to homeless children and the American families seeking to adopt them.

I. BACKGROUND

In 2007, international adoptions from Nepal were halted by Nepal in order to amend its adoption laws in an attempt to address allegations of widespread corruption and malfeasance then existing in the system. International adoptions from Nepal resumed in January 2009, after the Government of Nepal lifted a two-year self-imposed closure of the program. In August 2008, after the closure of international adoptions in Nepal but prior to the resumption of

adoptions, UNICEF issued a comprehensive study on international adoption in Nepal¹. In this report, UNICEF found the new Nepali adoption laws to be insufficient to address the issues that led to the 2007 closure of the program.

Nonetheless, despite the concerns outlined in the 2008 UNICEF report, international adoptions reopened in Nepal in January 2009. Dozens of American adoption service providers became licensed to conduct international adoptions in Nepal and American families began the process to adopt from Nepal. By the end of 2009, hundreds of American families had submitted their dossiers to Nepal and were registered with the Nepali Ministry of Women, Children and Social Welfare, waiting to receive referrals for children and enter the court process to finalize their adoptions. By this point, many of these American families had been matched with an orphan and had already begun to emotionally bond with the child they planned to adopt. In addition, these families had also invested a substantial amount of money, time and energy into pursuing the adoption of an abandoned child, and believed they would be permitted to proceed with the support of the U.S. Government to complete their adoptions from Nepal.

II. ACTIONS BY THE U.S. DEPARTMENT OF STATE

In February 2010, the Office of Children's Issues at the United States Department of State first signaled its intent to end international adoptions from Nepal². The Department of State advised adoption service providers that their accreditation status would be put at risk if

¹http://www.unicef.org/nepal/ADOPTING_the_Rights_of_the_Child_UNICEF_Terre_des_homm es_Embargoed_29Aug08.pdf

²http://adoption.state.gov/country_information/country_specific_alerts_notices.php?alert_notice_type=notices&alert_notice_file=nepal_1

they continued to operate in Nepal and advised families wishing to adopt from Nepal that they should seek to adopt children from other countries. The stated rationale was “grave concerns about the reliability of Nepal's adoption system and the accuracy of the information in children's official files,” based on a 2009 report from the Hague Conference's Permanent Bureau to Nepal³. The Department also stated:

*Based on our own observations and experience with adoption cases in Nepal, the U.S. Department of State shares many of the concerns outlined in the Hague report. In one of the first cases processed by the Government of Nepal after the revision of the Terms and Conditions, **the U.S. Embassy in Kathmandu found that the adopted child was not a true orphan and that his [sic] birth parents were actively searching for her.***⁴

However, contrary to the assertion in the quote above, the U.S. Embassy played absolutely no role in discovering or righting this wrong, and in fact found the child to be an orphan as a matter of U.S. law. By their own admission, in a U.S. Embassy cable to D.C. in October 2009, the U.S. Embassy described the facts as follows:

*Post processed the first four files of American adopting families... Inquiries into all four cases resulted in inconclusive evidence of any wrongdoing and the GON [Government of Nepal] designated orphan status of the children was confirmed by Post. **In one of the cases however, the American family withdrew their I-600A petition, citing what they felt were irregularities in on the part of the local police and the orphanage in addition to the child's behavioral problems.***⁵

In fact, the case of the withdrawn I-600A petition serves as an example of the Nepali system working as it was intended to function. Upon discovering that the child was not in fact an orphan and had two living parents, the Nepali Government appropriately reunited the child

³ http://www.hcch.net/upload/wop/nepal_rpt09.pdf

⁴ Nepal Adoption Notice, *supra* note 2.

⁵ Cable from American Embassy Kathmandu to Secretary of State, *Nepal Intercountry Adoptions Resume: Concerns Remain*, October 2009.

with her parents⁶. Further, at the time of this Department of State Notice, it must be noted that **only four** U.S. families had filed adoption petitions with the US Embassy in Kathmandu – an insufficient sample from which to draw any reliable conclusions based on its “own observation and experiences with adoption cases in Nepal.”

A few months went by, and the Embassy continued to hear of more American families that had submitted their dossiers to adopt from Nepal – up to 300 new families according to reports from the Nepali government⁷. The Embassy’s Consular Section of two employees feared an avalanche of work and reported their concerns to the Department of State headquarters, noting that they could not possibly conduct proper investigations of so many cases with such a small staff⁸. By this time, the Embassy had processed about thirty cases under the new legal system, **all of which were investigated and approved**, demonstrating the absence of any evidence of fraud.

Then in an unexpected turn of events, in August 2010⁹, the Department of State and USCIS announced the suspension on acceptance of new adoption petitions for children who had been abandoned in Nepal¹⁰. This announcement abruptly eliminated any chance for

⁶ http://archives.myrepublica.com/portal/index.php?action=news_details&news_id=15599

⁷ April 2010 cable from US Embassy to DC re: “We cannot meet the demand for the market” says GON Adoption Official

⁸ *Id.* (“We will conduct orphan investigations to the extent our resources will allow... However we are not confident that this effort will turn up many tangible leads...Post welcomes suggestions as to how it can conduct deeper field investigations with its limited resources.”); *see also* February 2010 cable from U.S. Embassy to D.C. re; Widespread Corruption indicated in Intercountry Adoption System (“Post believes that its own internal investigations into the orphan status of the child may fruitlessly drain resources and may not provide sufficient evidence to prove that the child is not an orphan.”)

⁹ <http://www.state.gov/r/pa/prs/ps/2010/08/145767.htm>

¹⁰ The Office of Children’s Issues, the U.S. Embassy in Kathmandu and USCIS continuously refer to the children as abandoned. However, their use of the term “abandoned” is inaccurate as a

international adoption to serve as a viable option for abandoned Nepali orphans and the vast majority of orphans in Nepal were abandoned or deserted. Hundreds of American families who had submitted their dossiers to adopt from Nepal were affected. Those American families awaiting referrals had their dreams of adopting from Nepal abruptly ended. Sixty-two American families with referrals of Nepali orphan children (the “Pipeline Families”) were also adversely impacted, although the Department of State and USCIS agreed to continue processing these cases, albeit with strongly worded warnings about delays and concerns about their legitimacy.

The real problems began immediately thereafter, when the Department of State, through the Consular Section at the U.S. Embassy in Kathmandu, undertook the required “orphan investigations”¹¹ for each of the 62 cases then pending for the Pipeline Families. The orphan investigations began from the premise that the documents of abandonment for each child, including police reports and orphanage records, were inherently unreliable. The U.S. Embassy sought then to “prove that the child was not an orphan” by searching for fraud in the police and orphanage records through interviews of police officers, orphanage staff, and community members. In the end, the U.S. Embassy found absolutely nothing – no evidence of fraud. In 82 days, the U.S. Embassy completed all 62 investigations and had absolutely nothing

matter of U.S. law. More precisely, these children were deserted. Indeed, according to the Foreign Affairs Manual, primary evidence of abandonment is a document signed by the parent(s) unconditionally releasing the child to an orphanage. 9 FAM 42.21 N13.2-5(3)(a). The children at issue are all foundlings, with no identifiable birth parents, and thusly are deserted children as defined by 8 CFR § 204.3(b).

¹¹ The orphan investigation is intended to verify the eligibility of the child to immigrate as an orphan to the United States under U.S. law. Department of State consular staff based at the U.S. Embassy act as USCIS’ proxy for orphan adoption cases in countries, such as Nepal, where USCIS does not have its own physical presence. The Embassy consular staff has delegated authority to approve cases, but they do not have authority to deny them.

to show for it. The U.S. Embassy touted the speed with which these investigations were “completed” as an impressive accomplishment, and the Chief Consular Officer was proud of the fact that each case had been investigated in little more than one business day¹².

At the close of the U.S. Embassy’s whirlwind investigations, the Embassy approved six cases. However, for the remaining 56 Pipeline Families, the Embassy officers found the cases “not clearly approvable” and forwarded them to the USCIS Field Office in New Delhi for review. Given the allegations made by the Department of State and the Embassy’s refusal to approve 90% of the Pipeline Families’ cases, the adoptive families and their adoption service providers braced for more bad news. USCIS approved one of the cases and issued “Requests for Evidence” to each of the 55 remaining families (the “Pipeline Cases”), detailing the U.S. Embassy’s concerns about the cases based on their investigations. The U.S. Embassy had found no fraud, but it had also been unwilling to accept the absence of fraud as evidence of the children’s orphan status. The Requests for Evidence (“RFEs”) required the adopting families to provide additional information about the circumstances of the child’s abandonment or to find the birth family.

III. ACTIONS TAKEN BY AMERICAN ADOPTIVE FAMILIES

The Pipeline Families were determined to proceed, so they hired lawyers and paid for investigators to go over the same ground that the Department of State had already travelled in investigating these cases. They did so, but far more thoroughly and competently than the Department of State. **In every case, without exception or condition, USCIS ultimately approved the Pipeline Cases. Just as with the orphan investigations conducted by the**

¹² Nepal Adoption Series Conference Call #3, 986_1618, statement from Mr. Clay Adler.

Department of State, no fraud was found and the Pipeline Families were finally able to bring their children home to the United States. However, the Pipeline families also discovered, in every case, without exception or condition, that the Department of State's orphan investigation had been poorly conducted and improperly documented, needlessly costing the American families precious time with their children and tens of thousands of dollars.

In the end, the Pipeline Families and their adopted children were united. But additional damage had been done to each child as the result of unnecessary months spent languishing in orphanages, where, day by day their health and mental development was further impaired. **The waiting children needlessly spent, on average, an additional 201 days in institutions. Additional damage was also done to the Pipeline families, who each spent in excess of \$25,000 on average just to address the unsubstantiated allegations raised by the Department of State.** American families felt that they had to fight their own government to protect their adopted children, at great personal expense and extraordinary emotional cost.

As bad as the experience was for these children and their families, even greater damage has resulted to the children who are still languishing in Nepal's orphanages today. The suspension has denied these abandoned orphan children the opportunity to find permanent loving families and also denied American families the opportunity to parent these children. The actions of the Department of State were unnecessary and predicated on suspicions rather than fact. The facts as set forth below demonstrate the compelling need to review the actions of the Department of State and USCIS in suspending adoptions from Nepal and to correct the flaws in the system that has caused needless damage to American families and their adopted children before this scenario plays out again in another country.

DETAILED REPORT ON NEPAL AND THE U.S. PIPELINE FAMILY CASES

Of the fifty-five Requests for Evidence issued by USCIS to the Pipeline Families, this Report reviews and presents the facts of forty of their cases. In each of the Pipeline Cases, the families have willingly provided the data and have specifically agreed to be included herein¹³. Indeed, without exception, the Pipeline Families whose stories are told in this Report want their voices heard as a means of preventing this injustice from being repeated in the future.

In order to fully appreciate what went wrong in Nepal, one must be able to contextualize the actions of the U.S. Government in the harsh environment of this least developed third world country. Each of the investigations completed by the U.S. Embassy in Nepal reflects a fundamental ignorance of the country in which they were conducted. One cannot effectively investigate the orphan status of children without understanding the realities of life in this impoverished nation. This ignorance permeates each and every RFE issued, and forms the basis of nearly every allegation of fraud, unreliability or misconduct asserted. For example, nearly every RFE included at least one allegation of someone being unavailable for an interview, whether it was a police officer, orphanage employee, or resident of the area where the child was found abandoned. In some instances, the person sought was in fact available, but the U.S. Embassy failed to exercise diligence in locating the individual. In other cases, the person sought was reported to have left the region, or even the country, resulting in the misguided allegation by the U.S. Embassy that one would only leave Nepal if they had something to hide. Such an

¹³ In an effort to protect the children whose histories are detailed in the investigations at issue, the personal identifying information for each family has been redacted. Each family was assigned a number for reference in this report.

accusation has no basis in fact or reality, as Nepal has one of the most mobile work forces in the world as people move to find work and opportunity in order to provide for themselves and their families.

I. Nepal Generally

Nepal is an impoverished landlocked country in South Asia bordering China and India¹⁴. There are approximately 30 million people living in Nepal, a country that is about the same size as Arkansas (by comparison, there are less than 3 million people living in Arkansas)¹⁵. In 1990 a multiparty democracy was established within the framework of a constitutional monarchy¹⁶. Six years later Maoist extremists began an insurgency that would evolve into a 10-year civil war that ravaged the country¹⁷. Over 17,000 people were reportedly killed during this conflict¹⁸, and countless children were left orphaned. Following peace talks, the first nationwide election was held in 2008 and Nepal abolished its constitutional monarchy in favor of a federal democratic republic¹⁹. After repeated failures to enact a constitution, the chief justice of Nepal's Supreme Court was sworn in as the head of the interim government in 2013²⁰. Today, Nepal remains prone to political instability as armed groups and regional factions advocating for autonomy for ethnic groups are spread throughout the country²¹.

¹⁴ CIA World Factbook, Nepal *available at* https://www.cia.gov/library/publications/the-world-factbook/geos/print/country/countrypdf_np.pdf.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Ministry of Peace Press Release, June 2012 *available at* <http://archive.is/NhKNa>.

¹⁹ CIA World Factbook, Nepal *available at* https://www.cia.gov/library/publications/the-world-factbook/geos/print/country/countrypdf_np.pdf.

²⁰ *Id.*

²¹ *Id.*

Nepal is one of the poorest and least developed countries in the world²². One-fourth of its population lives below the poverty line²³ and Nepal is considered to be “low income” by the World Bank²⁴. Despite some recent improvement, Nepal is still among the poorest countries in the world and is plagued by an unemployment rate of 46% and a severe lack of skilled labor²⁵. Children, in particular, are heavily affected by impoverishment. Nearly 40% of children live in absolute poverty and two-thirds of children are severely deprived of at least one basic need²⁶.

Due to the extraordinary poverty plaguing the people of Nepal, the country is experiencing negative net migration (more people are leaving the region than are coming in)²⁷. Often people migrate from one region of Nepal to another in search of better employment, educational, or marital opportunities²⁸. Additionally, for over 50 years, large numbers of Nepalese citizens have been leaving the country to seek opportunities in other countries²⁹. The number leaving has steadily increased since the 1950s and nearly three-quarters of a million Nepalese currently leave Nepal each year³⁰. As they seek employment and other opportunities

²² *Id.*; see also <http://unctad.org/en/pages/aldc/Least%20Developed%20Countries/UN-list-of-Least-Developed-Countries.aspx> (United Nations Conference on Trade and Development ranks Nepal among the 48 least developed nations in the world, based on Nepal’s per capita income, indicators of nutrition, health, school enrolment and literacy, and its economic vulnerability.)

²³ *Id.*

²⁴ The World Bank: Nepal Data *available at* <http://data.worldbank.org/country/Nepal>.

²⁵ CIA World Factbook, Nepal *available at* https://www.cia.gov/library/publications/the-world-factbook/geos/print/country/countrypdf_np.pdf.

²⁶ UNICEF Child Poverty and Disparities In Nepal Report 2010, p 2, 11.

²⁷ Bal Kumar, Migration, Poverty and Development in Nepal, *Asian and Pacific Migration Journal* Vol. 13, No. 2, 2004, p. 211.

²⁸ *Id.* at p 216.

²⁹ *Id.* at p 217.

³⁰ *Id.*

outside their home country, about half of emigrating Nepalese remain away from home for 1-5 years³¹. The other half remain away for more than five years, some indefinitely³².

Trafficking in persons is also a significant problem of concern in Nepal. Girls as young as nine may be victims of trafficking, primarily for sexual exploitation³³. Many women and girls are trafficked to India or other countries in the region to be put to work in brothels³⁴. Some trafficking for forced labor or domestic servitude also occurs, but at a lower rate than trafficking for sexual exploitation³⁵. Men may be victims of such trafficking along with women and young girls, but young boys are less likely to be victims of trafficking³⁶. Those in low caste groups are particularly vulnerable to being trafficked³⁷. Frequently, Nepali migrants seeking work in low skilled jobs outside the country become subject to abuses and conditions that constitute forced labor³⁸. Importantly, however, there is no indication that infants or toddlers are victims of trafficking in Nepal. There is simply no incentive as infants and toddlers cannot labor, are not sexually desirable, and require constant physical care.

II. Relevant History of Adoptions from Nepal

International adoption has existed in Nepal since 1976 when the legal code was amended to permit foreigners to adopt from Nepal. The pertinent amendment to the Nepali National Code provided: "If any foreign national willing to adopt Nepali nationals eligible to be

³¹ *Id.* at p 219.

³² *Id.*

³³ U.S. Department of State Human Rights Report Nepal 2008.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ U.S. Department of State 2013 Trafficking in Persons Report Nepal.

³⁸ *Id.*

adopted under the code; the government of Nepal viewing the economic status and moral character of such foreign nationals may grant permission of adoption specifying appropriate conditions provided such foreign nationals have recommendation of the government or embassy of their Nation.”³⁹ There appears to be no reliable information as to the number of international adoptions that have occurred in Nepal since 1976, but UNICEF states that between 1996 and 2007, 2488 children were adopted internationally from Nepal⁴⁰ averaging about 225 a year.

In May 2007, after discovering a number of serious issues within the system processing adoptions, Nepal closed its country to international adoption and began reforming its legal framework⁴¹. In May 2008, after a national election and change of leadership, Nepal enacted Conditions and Procedures 2008 (“New Nepali Adoption Code”) to govern international adoption and address the issues of fraud and corruption discovered in 2007. The Department of State announced the passage of the New Nepali Code, and also provided additional information about the families impacted by the May 2007 closure:

On May 2, 2008, the Nepali Cabinet approved new terms and conditions to govern the international adoption process, but it is not yet known when adoptions may resume. The legislation also stipulates that adoptive families who had been matched with a child prior to June 15, 2007 may be processed under the terms and conditions which were in effect at that time.

Some changes introduced by the new terms and conditions include:

The WCS Ministry, not the orphanages, will be responsible for matching children with adopting parents.

³⁹ 1976 Amendment to National Code of 1964, Clause 12 of Adoption Section.

⁴⁰ http://www.unicef.org/nepal/ADOPTING_the_Rights_of_the_Child_UNICEF_Terre_des_hommes_Embargoed_29Aug08.pdf

⁴¹ Id. at p. 8.

Documented efforts by the orphanages to find an abandoned child's natural parents will be intensified, as well as efforts to promote domestic adoption of these children by Nepalese families in Nepal as a first preference.

Adoption agencies must be registered with WCS in order to work in Nepal, and prospective adoptive parents must apply to adopt through these registered agencies.

Background:

The Ministry of Women, Children and Social Welfare (WCS), the ministry in charge of international adoptions in Nepal, had suspended the adoption of Nepalese children by foreigners on May 8, 2007, pending approval of reforms of the adoption process by the Nepali Cabinet.

On November 5, 2007 the Nepali Cabinet voted to allow the approximately 440 cases of adoptive families already matched with a child and assigned a Ministry case number to be processed under the existing terms and conditions of Nepal's adoption law. By April 2008, the U.S. Embassy in Kathmandu completed processing the last of the fifty American cases affected by this decision.

Contact: adoptionsnepal@state.gov

In August 2008, UNICEF issued a comprehensive study on international adoption in Nepal⁴². In this report, UNICEF found the New Nepali Adoption Code to be insufficient to address the serious issues that led to the 2007 closure:

The Conditions and Procedures 2008 have some comparative advantages over the previous rules, but do not provide sufficient guarantees to fully uphold the rights of the child. Stakeholders in the international adoption system remain the same, with little change in the authority, motivation and capacity to prevent flawed adoption practices. Some changes are significant, but they are not the legal reforms needed to stop child abuse. A total paradigm shift is needed to prevent the repetition of previous malpractices. In addition, a well-resourced, well-trained, and cooperative social welfare department, with the social work capacity to monitor and implement standards and guidelines, is critical for any legal reform to take root in daily practice.

Despite the concerns outlined in the UNICEF report, in early 2009, international adoptions reopened in Nepal. Immediately after Nepal made its announcement, the U.S. Department of State announced the reopening to the American adoption community via its

⁴²Id.

Adoption Notices vehicle. Dozens of American adoption service providers became licensed to conduct international adoptions in Nepal, in accordance with the requirements of the New Nepali Adoption Code, and countless American families began lining up to adopt the many orphan children from Nepal. By the end of 2009, hundreds of American families had submitted their dossiers to Nepal and were registered with the Ministry of Women, Children and Social Welfare, waiting to receive referrals for children and enter the court process to finalize their adoptions.

Also in early 2009, Nepal signed *The Hague Adoption Convention on the Protection of Children and Co-operation in Respect of Inter-Country Adoption (Hague Adoption Convention)*, which “gave a clear signal to the Hague Conference, and the Permanent Bureau as its Secretariat, that Nepal intended to become a party to the Hague Adoption Convention.⁴³” As a result of this clear signal, the Permanent Bureau solicited and received an invitation from Nepal to “make an assessment of the current situation and advise what needed to be done in Nepal prior to ratification of the Convention.⁴⁴” This assessment trip occurred in November 2009, and according to the report issued, failed to meet its primary objective of reaching the Nepali government officials responsible for implementing the steps necessary prior to ratification of the Hague Adoption Convention⁴⁵. However, the team sent to conduct the assessment prepared a report detailing their frustrations with the trip, their recommendations for changes to the system, and an unsupported and unsubstantiated section consisting of five bullet-points listing the perceived shortfalls of the then-existing Nepali adoption system:

⁴³ Intercountry Adoption Technical Assistance Programme Report of Mission to Nepal 23-27 November 2009, http://www.hcch.net/upload/wop/nepal_rpt09.pdf.

⁴⁴ *Id.*

⁴⁵ *Id.* at 3-4.

1. *Falsification of documents: there is evidence that this abuse is occurring regularly in order to declare a child adoptable and that this abuse has continued under the Terms and Conditions 2008;*
2. *False statements about the child's abandonment, origins, age and status: there is evidence that this abuse is occurring regularly in order to declare a child adoptable;*
3. *Lack of transparency and accountability for the money coming into Nepal (to the Government and institutions) from international adoptions;*
4. *The absence of a policy on international adoption as a child protection measure within an integrated policy of alternative care options for a child without a family;*
5. *A lack of alternative care solutions for children without parental care*⁴⁶.

The Report concluded with a recommendation to again suspend international adoptions, based on the findings of the August 2008 UNICEF study:

*Some of these recommendations may be implemented in the short term. Others will need to be implemented over a longer period. However, a plan and a timetable for implementation in the long term may be prepared now. The Permanent Bureau's technical assistance programme for Nepal has commenced, and it remains a matter for the Government of Nepal to decide how it wishes to proceed with the technical assistance programme. As suggested by the Unicef-Terre des Hommes study, it is recommended to suspend the application of the Terms and Conditions 2008 until a proper legal framework is in place*⁴⁷.

In late February 2010, the US Department of State issued its first warning about pursuing adoption in Nepal⁴⁸. However, by this time, the program had been open for over a year and hundreds of American families had submitted their dossiers to the Government of Nepal. This Adoption Notice provided the adoption community with the following admonition:

The U.S. Department of State strongly discourages prospective adoptive parents from choosing Nepal as a country from which to adopt due to grave concerns

⁴⁶ Id at 7-8.

⁴⁷ Id at 11.

⁴⁸ http://adoption.state.gov/country_information/country_specific_alerts_notices.php?alert_notice_type=notices&alert_notice_file=nepal_1

about the reliability of Nepal's adoption system and the accuracy of the information in children's official files. The Department also strongly discourages adoption service providers from accepting new applications for adoption from Nepal until reforms are made, and to be vigilant about operating in an ethical manner under the current adoption system.

The Hague Conference on Private International Law recently released a report on its International Adoption Technical Assistance Program, based on a visit by a delegate from the Hague Conference's Permanent Bureau to Nepal in November 2009 (http://www.hcch.net/upload/wop/nepal_rpt09.pdf). This report is the result of an independent analysis of Nepal's international adoption system under the new Terms and Conditions put in place in 2008. The report details a number of weaknesses in Nepal's current adoption system, including the falsification of documents, improper financial gain, and lack of a child protection system.

Based on our own observations and experience with adoption cases in Nepal, the U.S. Department of State shares many of the concerns outlined in the Hague report. In one of the first cases processed by the Government of Nepal after the revision of the Terms and Conditions, the U.S. Embassy in Kathmandu found that the adopted child was not a true orphan and that his [SIC] birth parents were actively searching for her.

We encourage parents who have filed an application with the Ministry of Women, Children and Social Welfare (MWCSW) in Nepal, but have not yet been matched with a child or received an Adoption Decree issued by the Government of Nepal, to consider a change of countries. The Department of Homeland Security, United States Citizenship and Immigration Services (USCIS), allow one change of country to be made in connection with one's I-600A application without fee. A request to change countries should be made in writing to the USCIS Field Office where the I-600A was originally filed. (Any subsequent request for a change of country would require a fee.)

Hague-accredited U.S. adoption services providers, and adoption service providers that may apply for Hague accreditation in the future, are reminded that their actions in facilitating and/or processing adoptions in any country (whether Hague or non-Hague) will be evaluated during the Hague accreditation or accreditation renewal processes, in accordance with the accreditation regulations (22 CFR Part 96), including whether, among other things, the provider has established and rigorously followed ethical adoption practices and operates in the best interest of prospective adoptive children.

Prospective adoptive parents who currently have active files at the Ministry of Women, Children and Social Welfare and who may already have an approved I-600 Petition to Classify an Orphan as an Immediate Relative from a USCIS

*domestic Field Office are reminded that consular officers are required by law to conduct an I-604 orphan investigation to verify the child's orphan status in order to the issuance of an IR-3 or IR-4 immigrant visa. Depending on the circumstances of a case, this investigation may take up to several months to complete, even if the I-600 Petition is already approved. In every country, we rely on the host government's diligence to protect the safety and interests of their own children through careful administration of their national adoption process. In the absence of a reliably diligent partner, it can be very difficult to confirm that a child is truly an orphan. Cases in which a child's orphan status cannot be confirmed will be forwarded to USCIS for review and final determination. **We strongly recommend that adoptive parents not travel to Nepal until the Embassy has confirmed that the I-604 has been completed. Under current procedures, prospective adoptive parents may file their I-600 petition with USCIS in the United States, which then triggers the I-604 investigation in Nepal.** Adoptive parents may contact the Embassy at adoptionnepal@state.gov should they have questions about the status of their case.*

The U.S. Embassy in Kathmandu continues to meet with officials within the Government of Nepal and with other foreign missions concerning the current status of adoptions in Nepal. The joint statement issued by the International Adoption Working Group on February 25, 2010 may be found at <http://nepal.usembassy.gov/pr-2-24-2010.html>. Please continue to monitor adoption.state.gov for updated information as it becomes available.

This Department of State warning came after dozens of American families had received referrals for the children that would join their families and after many of those families had begun the process of finalizing that adoption through the Nepali court system. Walking away was not an option, especially given that the 2009 International Adoption Technical Assistance Program Report was largely a regurgitation of the 2008 report, and the United States had permitted adoptions to proceed even after the issuance of the 2008 report. Additionally, two high-ranking officials from the Office of Children's Issues in the Department of State, speaking at the Center for Adoption Policy Annual Conference in New York City in early March, 2010,

unequivocally reassured a room packed with prospective adoptive parents, adoption service providers, and child advocates that adoptions from Nepal would not close⁴⁹.

On May 26, 2010, the U.S. Department of State issued its second warning regarding adoptions in Nepal⁵⁰. This warning was nearly identical to the February 2010 Adoption Notice, and contained a new and important admission that though “the U.S. Embassy has only seen a handful of cases since the new Terms and Conditions [Nepal Adoption Code] went into effect” the U.S. Embassy “shares many of the concerns outlined in the Hague Report.” Further, at the time of this Department of State Notice, it must be noted that **only four** U.S. families had filed adoption petitions with the US Embassy in Kathmandu – an insufficient sample from which to draw any reliable conclusions based on its “own observation and experiences with adoption cases in Nepal.”

The February 2010 Notice and May 2010 Notice both continue to explain that “[i]n one of the first cases processed by the Government of Nepal after the revision of the Terms and Conditions, the U.S. Embassy in Kathmandu found that the adopted child was not a true orphan and that his [sic] birth parents were actively searching for her.” This statement is misrepresentative of the facts⁵¹. The U.S. Embassy played absolutely no role in discovering or righting this wrong, and in fact found the child to be an orphan as a matter of U.S. law after conducting the I-604 review. By their own admission, in a U.S. Embassy cable to D.C. in October 2009, the U.S. Embassy described the facts as follows:

⁴⁹ Affidavit of Jody Marten, 1 January 2011.

⁵⁰ http://adoption.state.gov/country_information/country_specific_alerts_notices.php?alert_notice_type=notices&alert_notice_file=nepal_2

⁵¹ October 2009 cable from U.S. Embassy to D.C. re: Nepal Intercountry Adoptions Resume; Concerns Remain

*Post processed the first four files of American adopting families... Inquiries into all four cases resulted in inconclusive evidence of any wrongdoing and the GON designated orphan status of the children was confirmed by Post. **In one of the cases however, the American family withdrew their I600A petition, citing what they felt were irregularities in on the part of the local police and the orphanage in addition to the child's behavioral problems.***⁵²

Indeed, the case of the withdrawn I-600A petition serves as an example of the Nepali system working as it was intended to function. Upon discovering that the child was not in fact an orphan and had two living parents, the Nepali Government appropriately reunited the child with her parents and delisted the orphanage responsible for the unlawful adoption⁵³.

On August 6, 2010, little more than a year and a half after international adoptions with Nepal had resumed, the Department of State, together with USCIS, announced the immediate suspension of the adoption of abandoned children from Nepal⁵⁴. Effectively, this ended international adoptions by Americans from Nepal, as all of the children placed for adoption were abandoned. Following is the text of the joint statement issued by Department of State and USCIS:

In order to protect the rights and interests of certain Nepali children and their families, and of U.S. prospective adoptive parents, the Department of State and U.S. Citizenship and Immigration Services (USCIS) have jointly decided to suspend adjudication of new adoption petitions and related visa issuance for children who are described as having been abandoned in Nepal.

The Department of State's recent interactions with the Government of Nepal and its efforts to review and investigate numerous abandonment cases, including field visits to orphanages and police departments, have demonstrated that documents presented to describe and "prove" the abandonment of children in Nepal are unreliable. Civil documents, such as the children's birth certificates often include data that has been changed or fabricated. Investigations of children

⁵² Id.

⁵³ http://archives.myrepublica.com/portal/index.php?action=news_details&news_id=15599

⁵⁴ <http://www.state.gov/r/pa/prs/ps/2010/08/145767.htm>

reported to be found abandoned are routinely hindered by the unavailability of officials named in reports of abandonment.

Police and orphanage officials often refuse to cooperate with consular officers' efforts to confirm information by comparing it with official police and orphanage records. In one case, the birth parents were actively searching for a child who had been matched with an American family for adoption. Because the Department of State has concluded that the documentation presented for children reported abandoned in Nepal is unreliable and the general situation of non-cooperation with and even active hindrance of investigations, the U.S. Government can no longer reasonably determine whether a child documented as abandoned qualifies as an orphan. Without reliable documentation, it is not possible for the United States government to process an orphan petition to completion.

To the best of our knowledge, all other countries that had been processing adoption cases from Nepal have stopped accepting new cases due to a lack of confidence that children presented as orphans are actually eligible for inter-country adoption.

The suspension of adjudication of new adoption petitions on behalf of Nepali children documented as found abandoned is effective as of the date of this statement. Any petition filed for a child who has been presented as found abandoned and who was matched with a prospective adoptive parent prior to the date of this announcement, as evidenced by an official referral letter from the Government of Nepal, will continue to be adjudicated on a case-by-case basis and in light of the totality of the evidence available. The Department of State will reach out to prospective adoptive parents who meet this criteria. Petitions that continue to be adjudicated will only be approved if they are supported by reliable evidence. Every effort will be made to process their cases as expeditiously as possible with the best interests of children in mind.

The Department of State also issued a document entitled "Nepal Adoption Suspension: Frequently Asked Questions"⁵⁵ which provided, in pertinent part, the following warning and promise to the Pipeline Families then in process:

Q. What will happen to families who are already matched with a child from Nepal?

⁵⁵http://adoption.state.gov/country_information/country_specific_alerts_notices.php?alert_notice_type=alerts&alert_notice_file=nepal_7

*A. The suspension applies to abandonment cases in which the prospective adoptive parents have not yet been matched with a child from Nepal. The Government of Nepal's Ministry of Women, Children and Social Welfare issues an official "referral letter" to inform prospective adoptive parents of a proposed match. If the Government of Nepal has issued the official referral letter prior to August 6, 2010, the case will be processed to conclusion. **In light of concerns regarding the validity of documents supporting abandonment cases in Nepal, the cases will be carefully investigated and only those in which there is sufficient credible evidence to conclude a child has been found abandoned will be approved.** If consular officials at the U.S. Embassy in Kathmandu determine that a case is not clearly approvable, they are required to forward the Form I-600, Petition to Classify an Orphan as an Immediate Relative, to the USCIS office in New Delhi for review. USCIS and the Department of State will process each case individually, based on the evidence presented and the results of the investigation. If additional information is required to complete the processing of any particular case, USCIS will request additional evidence specific to the facts of that particular case, and the prospective adoptive parents will have an opportunity to respond.*

I. The 2010 Nepal Pipeline Families

On August 6, 2010, the date the U.S. suspension of adoptions was announced, there were 66 American families in the process of completing adoptions of abandoned children from Nepal (the "Pipeline Families") and whose cases immediately became stuck. The Pipeline Families all believed that their cases would be permitted to proceed, and as with all the cases that had come before them, they believed their cases would yield timely approvals so that they could bring their children home and begin their lives together as a family.

Also, on August 6, 2010, there were six Pipeline Families physically present in Nepal, and at the final stage of their adoptions. In each of these cases, the families had recently been invited to travel to Nepal by the Government of Nepal as the final step in the Nepali adoption process. Under the New Nepali Code, the adoptive parents have 60 days to travel and complete the adoption, or they risk the suspension or cessation of their adoption process

entirely, and therefore the loss of the child they intended to adopt. For many of the Pipeline Families, this 60-day clock was a source of great concern, as the Government of Nepal could revoke their referrals should the families be unable to travel within the mandatory period. Time was of the essence.

Importantly, in the days immediately preceding the suspension notice, the U.S. Embassy directly sent to each of those six Pipeline cases, specific invitations to travel, along with detailed instructions on how to complete their adoption process. For example, one family received the following email from the U.S. Embassy just nine days prior to the August 6, 2010 suspension⁵⁶:

Congratulations on making your travel plans. You and your wife must be very excited. It has been a very long journey for you both.

We have made a note that you are arriving in country on 4 August. We ask that you please make every attempt to come to the U.S. Embassy as soon as possible after your arrival. While we understand that your first stop will undoubtedly be the orphanage to meet your matched child, please try to visit within 24 hours. We will need to give you a packet of documents that must be completed. Our American citizen service hours are from 1:30-4:30. This is the best time to come – Monday through Friday.

After the adoption is complete with the Ministry – please call or contact us for an interview time with a consular officer. You will need to bring the packet of documents that we provide along with additional documents from the Ministry and the orphanage. Your agency can help you with this. The investigation (I-604) will begin after this interview is complete. Again, we cannot predict how long it will take so please be prepared to be extremely patient.

Most immediately, we would like to receive the ‘documents of origin’ for your matched child just as soon as we can. Perhaps your country representative can drop these off prior to your arrival. If not, please bring them with you when you come to the Embassy.

I am your first point of contact here at the Embassy. Please feel free to e-mail or call me once you are in country. If you have a question or a problem, please let

⁵⁶ Family 22, email attached at Exhibit X.

me know. It would be helpful if you provide local contact information as soon as possible – in case I may need to get in touch with you about your fingerprints.

*April
Adoption Unit
Consular Section
American Embassy
Kathmandu, Nepal
Tel: 977-1-4007200
Fax: 977-1-4007281*

Needless to say, all of the Pipeline Families, and particularly the six families present in country, were caught utterly by surprise when the U.S. Government announced the suspension of Nepal adoptions, in spite of its public assurances that the program would remain open and the small number of cases that had been processed to date, all of which had been approved without any findings of fraud.

a. Misinformation from Department of State

After announcing the suspension of adoptions on August 6, 2010, the Department of State undertook a crusade to justify its decision. The Department of State, through its statements, misinformed the public, the Pipeline Families, and Members of Congress about the state of adoptions in Nepal, in an apparent effort to justify the closure of the program. Set forth below are several examples of the misinformation provided by the Department of State and U.S. Embassy.

On August 12, 2010, the U.S. Embassy hosted a Town Hall meeting for the six Pipeline Families in Nepal. The U.S. Ambassador to Nepal, accompanied by Consular Affairs Officers met with the families to discuss the current state of adoptions in Nepal, and ostensibly to offer them some guidance during this difficult time. After exchanging niceties and listening to the Ambassador speak about the dangers of traveling or living in Nepal, the meeting came to focus

on adoptions. The Ambassador began by telling the families that the entire adoption system was corrupt, though when asked to give specific examples, no U.S. Embassy staff could provide any. In a futile attempt to mitigate the harsh circumstances, the Ambassador told the group that the United States was the last country to shut down the adoption program in Nepal. When asked why the United States had not acted sooner if in fact the entire program was, as they said, fraudulent, the Ambassador said that the program had remained open because they were “building a case.” The Chief Consular Officer went so far as to tell the families that “when the Nepalese government shut down the adoption program in 2007 all of the orphanages emptied out because birth parents came to pick them up,” which is patently false given the number of children referred to the American families that entered into orphanages in 2007, immediately after the closure. The Chief Consular Officer also tried to encourage the families to abandon their newly adopted children, regardless of the fact that three of these children were present at the meeting. He told the families to “just pack up and go home and forget about it.” And he added, “I think they [Nepalese children] are cute too, but I can no longer stand by and let children be adopted in a corrupt program.” The families were warned that they should expect to be in Nepal for anywhere from several months to two years while the U.S. Embassy investigated their cases. When the families asked the U.S. Embassy what it intended to do about having six families stuck in Nepal based on the new policy, the Ambassador answered “I have to be honest with you: six families is not a big deal.”

Needless to say, the six families left the meeting feeling very discouraged, and feeling as though their government had abandoned them. The U.S. Embassy made clear that they had prejudged their cases as corrupt, even prior to conducting the investigations. The conduct of

the U.S. Embassy staff at this meeting was, at best, unprofessional and inappropriate. At worst, it showed a clear bias against adoptions from Nepal and a total disregard for the families and children impacted.

Many other Pipeline Families recount specific individual conversations with U.S. Embassy staff throughout their ordeal. One family, during a private meeting at the U.S. Embassy, was told by the Chief Consular Officer “I know how you feel. When I go to the orphanages, I like the kids too.” The Chief Consular Officer went on to admonish the family for engaging their Members of Congress telling them that the contact from Congress about their case “was a great burden and interrupted [their] progress in the investigations.⁵⁷” Other families will testify that they were told that their cases would never be approved, that their children were stolen, that if they returned their adopted children to the orphanages that the birth families would return for them, that every case was corrupt, and that they should switch to a different country to adopt a child. It is not properly within the purview of the Department of State to pre-judge cases or to participate in family planning with the American families they serve, yet this is precisely the role it chose to assume with the Pipeline Families. In addition to these private conversations, the Department of State also hosted a series of conference calls with the Pipeline Families for the purpose of keeping them informed of the progress of the I-604 investigations and the status of adoptions in Nepal. On August 31, 2010, the Department of State hosted a call with the Pipeline Families and told them that it was “very concerned” that birth parents were actively searching for the children the families intended to adopt. They were explicitly told to “hope for the best and prepare for the worst.” On October 5, 2010, the

⁵⁷ Family 8

Department hosted another call with the Pipeline families. On this call, the families heard from the Chief Consular Officer that Nepal adoptions were “a baby trafficking industry” and that fraud was pervasive at all levels of the Nepali system. On December 15, 2010, over four months after the suspension was announced, the Department of State hosted yet another call. The Pipeline Families were desperate for information and for signs of progress in their respective cases; however, the Department of State and USCIS offered precious little on either front. In this call, the U.S. Government instead conceded that no fraud had been found in any case investigated since the suspension was announced. Despite the admitted absence of fraud, not a single Pipeline case had yet been approved.

The Pipeline Families actively and aggressively engaged the media and Members of Congress in an effort to ensure their adoption process was adjudicated fairly and expeditiously, a fact that could not be reasonably anticipated given the unfounded proclamations of the Department of State. Dozens of articles were published in local, national, and international media covering the hardship the families and children faced at the hands of the United States Government⁵⁸. In addition, countless emails and letters were sent to Members of Congress urging their advocacy and intervention by and on behalf of the Pipeline Families.

In addition to the direct communications with the Pipeline Families, the Department of State took the extraordinary step of making its case directly to the public via a published editorial in the Kathmandu Post, rather than its usual vehicle for communications – the notices

⁵⁸ [http://www.ekantipur.com/the-kathmandu-post/2010/09/18/metro/us-ban-leaves-couple-heartbroken/212869/;](http://www.ekantipur.com/the-kathmandu-post/2010/09/18/metro/us-ban-leaves-couple-heartbroken/212869/)

and alerts on the Department of State website⁵⁹. On October 4, 2010, the Chief Consular Officer made the following public statement:

U.S. Adoptions

The stories about the American parents who are waiting to bring home their adopted Nepali children are heartbreaking. However, to understand the U.S. policy on adoptions in Nepal, it is important to understand the larger picture. A vulnerable adoption process had created an environment in which Nepali children were being taken from their families and fraudulent documents used to show abandonment. The decision of the U.S. government to suspend adoptions of Nepali children claimed to be abandoned was in response to this tragic situation. Our Embassy continues to process cases in which the Government of Nepal matched prospective adoptive parents with a Nepali child before Aug. 6, 2010. We have brought in a team of investigators to determine whether claims of abandoned or orphaned children are legitimate. Proving or disproving fraud in an environment in which fraud is pervasive is extremely challenging. We sympathise with the families who are waiting for a resolution; this is a frustrating and difficult experience for them. By attempting to verify the origins of children claimed to have been abandoned and presented for adoption to American families, we are trying to ensure that the good intentions of those families and the rights of those children so sadly caught in the middle are fully safeguarded and respected.

*Clay Adler
Consular Chief
US Embassy, Kathmandu⁶⁰*

Indeed, this was part of their public relations strategy. The Department of State knew full well that, “in the end these cases [would] likely all be re-approved by USCIS.” Not to be deterred by the facts or absence of evidence, the Department of State also directly engaged with Members of Congress to make its case that all Nepal adoptions were “a baby trafficking industry.” In late November, 2010, the Office of Children’s Issues sent the following email to Congressional staffers:

⁵⁹ <http://www.ekantipur.com/the-kathmandu-post/2010/10/04/letters/voice-of-the-people/213523/>

⁶⁰ Id.

Dear Congressional staffers,

These three short videos were brought to the Department of State's attention and we thought you might be interested in seeing them. They were produced in connection with the upcoming release of a book written by Next Generation Nepal's founder Conor Grennan - Little Princes: One Man's Promise to Bring Home the Lost Children of Nepal.

*Sincerely,
Ruth Lincoln
Adoption Division, Office of Children's Issues
Overseas Citizens Services
Bureau of Consular Affairs
U.S. Department of State
Washington, D.C.
Tel: (202) 736-4995*

DISCLAIMER:

The Office of Children's Issues was made aware of the existence of short videos from the organization Next Generation Nepal. The Office of Children's Issues had no parts in the creation of these videos and cannot verify its contents.

Conor Grennan Discusses Nepal and Little Princes
<http://www.youtube.com/watch?v=SzS9v1TBsbM>

The Journey Home
<http://www.youtube.com/watch?v=AZpn6lcRB2M&NR=1>

Lost and Found
<http://www.youtube.com/watch?v=xcFijNfowjg&feature=channel>

A review of the video clips circulated by Department of State to Congressional offices reveals the tragic and compelling impact of human trafficking on the children of Nepal. However, what is not made clear by these clips is how completely inapplicable the stories told are to Pipeline Families and their adoption cases. First, the Department of State knew it was making a material misrepresentation when it sent the email communication to Congress. The U.S. Embassy met with Mr. Grennan, the producer of these videos, prior to sending the communication to

Congress and noted in an email back to D.C. that Mr. Grennan had explained “that the situation of these children [in the videos and book] is different – the child [SIC] are older and can talk and remember where they came from.⁶¹” It must be remembered that human trafficking in Nepal primarily targets children over the age of nine, who can be sold into slavery, prostitution, or other forced labor and that the children who were being adopted were primarily toddlers, and therefore of no utility to the trafficking industry. A simple review of the Department of State’s own website makes this abundantly clear, but this information was omitted from distribution to Congress. Second, the overwhelming majority of the children being adopted by the Pipeline Families entered institutional care during a time when adoptions from Nepal did not exist. As such, there was no “market” for infants, such that trafficking would have satisfied no demand. One can only conclude that it was the intent of the Department of State to mislead Members of Congress, and leave them with the impression that the suspension was in response to an epidemic of human trafficking in infants and toddlers, an allegation that was and is wholly unfounded. Indeed, the Department of State was well aware of the impact of sharing links, noting that doing so “implies endorsement of this publication” and “implies that [State] has researched the facts presented” and “find[s] them accurate.”⁶²

A. U.S. Government Issues RFEs and the Pipeline Families Respond

The U.S. Embassy and Department of State were unyielding in their efforts to justify the closure of Nepal. In furtherance of their objectives, they also subjected the Pipeline Families to

⁶¹ November 24, 2010 email from Clay K. Adler to Alison E. Dilworth and Ruth A. Lincoln re: Nepal Update on more countries processing adoptions.

⁶² November 2, 2010 Department of State internal email thread [K802 in FOIA production].

intense scrutiny in the course of “investigating” the cases and adjudicating the I-600s. Under the laws of the United State, processing I-600 petitions is the responsibility of USCIS⁶³. However, in those countries where USCIS does not have a physical presence, the adjudication, including the I-604 investigation, is delegated to the U.S. Embassy in the country where the child is being adopted. In Nepal, USCIS did not have a physical presence, and therefore the I-600 adjudication was delegated to the U.S. Embassy in Kathmandu.

Regardless of whether the I-600 is adjudicated by USCIS or the Department of State, the standard of proof in adjudicating I-600 petitions is the “preponderance of the evidence” standard⁶⁴. As such, petitioners must only prove by a preponderance of the evidence that the beneficiary, their adopted child, is eligible for the benefit sought⁶⁵. Under this very low standard of proof, petitioners need only present evidence to demonstrate that it is “probably true” that their child is an orphan, or said another way, that it is “more likely than not” that their child is an orphan⁶⁶. Additionally, and perhaps most importantly, even where a field adjudicator has “some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the [adjudicator] to believe that the claim is ‘probably true’ or ‘more likely than not,’ the applicant or petitioner has satisfied the standard of proof” and must be approved.⁶⁷”

⁶³ See 8 CFR 204.3.

⁶⁴ *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966).

⁶⁵ *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965).

⁶⁶ See *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring).

⁶⁷ See January 11, 2006 USCIS Memorandum Re: Alternate definition of "American firm or corporation" ... and the standard of proof applicable in most administrative immigration proceedings.

It is equally well settled that whether to approve an I-600 petition is an issue of eligibility and not of discretion⁶⁸. However, in the Pipeline Cases, the U.S. Embassy relied on suspicions and not facts, and rather than approve cases in accordance with the laws, chose to exercise excessive discretion in adjudicating cases. The law is undeniably clear that orphan classification is not appropriate for cases involving “clear and documented evidence of child-buying, fraud or misrepresentation”⁶⁹. However, in all of the Pipeline Cases, as set forth below, there existed absolutely no evidence at all—clear and documented or otherwise—of fraud, child-buying, or misrepresentation. One need not even review the cases to confirm this fact – Chief U.S. Consular Officer confirmed the absence of any evidence of fraud on a conference call with the Pipeline Families in December 2010⁷⁰. The U.S. Embassy’s failure and refusal to approve I-600 Petitions, especially in light of its admission that there was no evidence of fraud, was an abdication of its duty to the U.S. Citizens it serves, and their adopted children, not to mention the thousands of Nepali orphans denied the opportunity to be adopted as a result of the closure of Nepal.

In every RFE issued, USCIS relied entirely on the I-604 investigation completed by the U.S. Embassy. At the outset, it must be remembered that the I-604 investigations were completed for 62 cases in 82 days, a timeframe that in and of itself lends itself to issues of accuracy and completeness. For the 55 cases that received RFEs, they each stated, in general, that:

USCIS and the Department of State have learned of irregularities in the methods used to identify children for adoption in Nepal that make it difficult to determine if children qualify as orphans under U.S. immigration law. Field verifications

⁶⁸ *Matter of Polidoro*, 12 I&N Dec. 353 (BIA 1967).

⁶⁹ See 9 FAM 42.21 N13.2-8(a).

⁷⁰ See Nepal Adoption Series Conference Call #3, 986_1618 (Mr. Bird and Ms. Benavidez affirming that there were no indications of fraud).

conducted by the Department of State have found evidence of the following serious irregularities:

- Civil documents presented to describe and prove the abandonment of children in Nepal are unreliable. Civil documents, such as the child's birth certificates often include data that has been changed or fabricated;*
- Orphanages and police departments have been unable to corroborate the representations made in documents presented to describe and prove abandonment of children in Nepal;*
- Investigations of children reported to be found abandoned are routinely hindered by the unavailability of officials named in the reports; and*
- Police and orphanage officials' refusal to cooperate with consular officers' efforts to confirm information regarding the abandonment.*

Such generalized allegations of “serious irregularities” have no lawful place in the RFEs. These generalities were improperly relied upon by USCIS in evaluating the evidence submitted by Pipeline Families as the determination of the veracity of a document or the “truth” must be made on the factual circumstances of each individual case⁷¹.

Further, it must be noted that none of these “serious irregularities” are specific to any of the Pipeline Families cases and amount to little more than unsubstantiated and improperly drawn suppositions, based on the speed with which the I-604 investigations were conducted and the lack of skill and competence employed by the U.S. Embassy investigators. Nonetheless, based on these purported “irregularities”, the U.S. government determined in every single case that the child’s documents of origin submitted in support of the I-600 Petitions were

⁷¹ *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989).

“unreliable.” In most cases, the documents of origin consisted of: 1) the Nepali police reports detailing the finding of the child; 2) the birth certificates issued by the Nepali Ministry of Local Development; and 3) the Certification of Orphan Status issued by Nepali Ministry of Home affairs. Once these crucial documents were deemed “unreliable,” the U.S. Government disregarded the documents entirely in the adjudicatory process, in most cases leaving only public notices searching for birth parents and thereby rendering each case un-approvable. Instead of accepting the veracity of these documents or competently attempting to confirm their contents, the U.S. Government summarily rejected the evidence and “provided” the Pipeline Families with an “opportunity to supplement the record of proceeding with evidence that the child does qualify as an orphan.”

In addition to the blanket allegations of “unreliable documents,” each RFE also detailed the “serious irregularities” specific to each I-604 investigation, though in most every case, the “serious irregularities” were virtually the same, and centered around three main areas of inquiry: 1) the police; 2) the orphanage; and 3) the community where the child was found abandoned. In reviewing one case, as an example, it becomes clear that the true “serious irregularities” arose from the actions and conclusions of the U.S. Embassy. In this one case⁷², it is abundantly evident that there was no set of facts that could overcome the bias and suspicions of the U.S. Embassy. The investigators for the U.S. Embassy found a police officer with specific recollection of the child’s finding, and her account of the child’s finding and admission to the orphanage was accurately reflected in the police report that bore her signature. In addition, the U.S. Embassy reviewed orphanage admission records and obtained

⁷² Family 19.

corroborative statements from the vice-president of the orphanage and the nanny for the child. Inexplicably, the family was issued an RFE and the child waited an additional 176 days to come home to the United States.

a. Police

In every instance, the U.S. Embassy complained about the contents and quality of the police records and reports. Specifically, the U.S. Embassy complained that the police records failed to identify with specificity the officers on patrol at the time the child was found and that the officer who signed the police report recording the child's finding lacked personal knowledge of the contents of the police report. The U.S. Embassy also alleged that the police officers were unable or unwilling to corroborate the contents of the police reports when interviewed. Characterizing these "findings" as "serious irregularities" is both misrepresentative and ignorant. It ignores the reality of conditions in Nepal, and it misrepresents the policies, procedures and resources of the various police stations at issue.

First, the U.S. Embassy fails to acknowledge or appreciate the condition of the police stations and the meager resources available to the officers operating therefrom⁷³. Instead, the U.S. Embassy wrongly applied first world standards and expectations to one of the least developed countries in the world. Again and again, the U.S. Embassy complained that the police stations did not maintain records reflecting which officers were on patrol at the time the child at issue was found abandoned. The absence of patrol records is not a serious irregularity, but instead a logical reality given the absence of computers and physical storage facilities and space in the police stations.

⁷³ See e.g. Family 21, exhibit 12.

The Pipeline Families, through their investigations, learned that patrol records are made by hand each day for the very limited purpose of informing the police officers of their assignment on that date. Unlike police departments in the United States, officers on patrol are assigned to different areas routinely, and work with different officers on each shift. This document is not considered important at all in the eyes of the police, beyond its use on the day for which it was created, and therefore is stored only for so long as there is physical space to keep it. Because of space and resource constraints, patrol records were discovered to generally be available in a police station for a period of one to two months, as the handwritten documents are bundled together with string and placed in a space for storage. In many cases, the police stations at issue were little more than single room lean-to sheds with a desk and cot for officers to sleep on. In each of the Pipeline cases, the patrol records requested by the U.S. Embassy would have required storage for a period of one to four years, a timeframe not reasonable under the existing circumstances in this very poor country. The RFE Response of Family 22⁷⁴ is representative of the information discovered in all of the cases where this complaint was made:

We keep temporary records [of patrolling]. We don't keep them permanently and it is not possible. Because we don't have appropriate place to keep them. You can see our office. We have no computer to keep data, no file-cabinets to keep files. See we have to pack the previous year's documents in a piece of cloth. Most of the papers are destroyed by mice. Even no place to keep these compilations. Office is also adjusted in this simple house. These documents have made difficulty in space even in the bedroom.

The U.S. Embassy also complained that the police officers that signed the police reports regarding a child's abandonment lacked personal knowledge of the contents of the document

⁷⁴ Family 22, Response Affidavit of Sub-Inspector Kamal Bahadur Khatri, Exhibit I-2, item 13; see also Family17 RFE Response, Tab 9 (photos of the police station exterior and interior); see also Families 23, 34 and 40.

they signed. This complaint, in some cases, is absolutely accurate and wholly insignificant once the roles of the various officers are fully understood. “Nepalese protocol considers it routine and appropriate for the patrolmen who rescued a child to bring the child into the sector, have a policeman of a rank higher than patrolman prepare the document and then have the highest ranking policeman sign the document.”⁷⁵ It is the policy and practice in Nepali police stations for the senior most officer on duty to sign the reports prepared by his or her subordinates. His signature affirms that the report was prepared, not his personal involvement in the events described or personal knowledge of the contents of the report. Moreover, the reports are then archived by a records custodian, who when asked by Pipeline Families to produce the original report was able in most of the cases to do so, thereby authenticating the copy provided to the U.S. Embassy as one of the documents of origin prepared contemporaneously with the finding of the child. Apparently, the U.S. Embassy did not seek to do this, and regrettably, reached an incorrect conclusion. In some cases⁷⁶, the examination of the original also revealed the signature of the orphanage staff person who took custody of the child upon the child’s admission to the orphanage, providing additional corroborative evidence. In another case⁷⁷, a photograph of the child at the time of her finding was attached. This very simple act of authentication should have served to eliminate any doubt as to when the document was prepared and whether it was in fact prepared by the police station involved in responding to the finding of the child.

⁷⁵ Family 24.

⁷⁶ See e.g. Family 14, Ex. 9 (photograph of the front and back side of the original police report was produced in response to the RFE)

⁷⁷ Family 17.

It must be remembered that the U.S. Embassy was searching for officers with personal knowledge to corroborate the details contained in the report, as it had determined the document itself, standing alone, was unreliable. However, where the U.S. Embassy was able to find a police officer with personal knowledge of the finding of the abandoned child, the U.S. Embassy discredited their statements and complained that the police officers were not credible or sufficient to corroborate the police report. In one case⁷⁸, the U.S. Embassy's distrust is made clear where it states that no children have been abandoned since the responding officer was transferred to another police station. However, what the RFE fails to disclose is that the officer had only been reassigned for the previous two months, a period of time insufficient for drawing such a conclusion. In another case⁷⁹, the U.S. Embassy interviewed the officer who signed the police report and he recalled the details of the child's finding with such clarity and specificity that he was able to provide the U.S. Embassy with a hand drawn map to the exact location of the child's finding. However, instead of accepting his statement and map as corroborating evidence, the U.S. Embassy rejected it entirely because it was unable to find residents or business areas at the location who could recall the child's abandonment when it went to the location. Though the U.S. Embassy appears to have followed the map, it did not consider the changes to the area in the intervening years and appears ignorant that the child was found in a construction zone for a major bridge and highway project, at a time when residences and businesses were not found in the immediate surrounding area. As such, its field investigation

⁷⁸ Family 15.

⁷⁹ Family 27; See also Family 1 (where a map was drawn and where the officer physically escorted the U.S. Embassy official to the location, but his statements were deemed not credible because the U.S. Embassy's field investigation was unsuccessful) and Family 18 (police officer recalled finding in great detail upon having his memory refreshed, but his statement was given little weight because it is not "third party corroborative evidence").

does nothing to undermine the credibility of the police officer. Also, as set forth below, it was unlikely that sending a young Caucasian female to question Nepali citizens about criminal activity carrying a harsh penalty, such as child abandonment, would yield useful information.

The U.S. Embassy further complained in many of the cases that the pertinent police officers were unavailable to the Embassy investigators and/or unwilling to cooperate with the investigation. Again, as with the other complaints of the U.S. Embassy, there is very little truth to this allegation and where the officers sought were in fact unavailable, the reason fell far short of the nefarious purpose of evasion implied in the RFEs. Instead, what the Pipeline families discovered in their own investigations was the U.S. Embassy simply failed to conduct their investigation in a manner that would lend itself to finding the officers and obtaining the information they sought. Officers who were truly unavailable in every case examined were unavailable because of reassignment, relocation, or retirement⁸⁰

In other cases, the U.S. Embassy claimed police officers were unavailable, yet the Pipeline Families easily found the officers who each willingly participated in their investigations and provided the corroborating information sought. In one case⁸¹, the RFE alleges that the officer was unwilling to participate when the U.S. Embassy tried unsuccessfully to reach him over the course of *two* days “through various contact numbers they were given for him.” However, the Pipeline Family’s investigator easily made contact with him and he fully cooperated with the investigation, providing his detailed recollection of the child’s finding. In

⁸⁰ Family 6 (officer promoted and reassigned to Sudan for one year; former colleagues confirmed his signature on the report and reassignment); Family 8 (officer was re-assigned to Haiti for a special assignment, but was easily found on Facebook by the Family and participated in an interview when asked); Family 33 (officer had been reassigned to East Timor peacekeeping mission).

⁸¹ Family 9; See also Families 18, 22, 41 and 42.

another case⁸², the RFE characterized the police officer as unable to produce relevant records “due to lack of proper record keeping and excuses (such as poor filing, lack of computer system, lack of space) provided by [the police officer].” The Pipeline Family, in contravention of the allegations of the RFE, discovered that the officer told the U.S. Embassy investigators he could not retrieve the report sought at that moment, but asked them to return in two days at which time he had it available. Unfortunately, the Embassy investigators never returned to discover the officer’s file he created for the finder of the child⁸³, a file that led the Pipeline Family directly to the finder and yielded substantial corroborative evidence. Such an omission is inexcusable and improperly led to the issuance of an RFE.

Finally, the U.S. Embassy claimed some of the officers refused to cooperate and provide additional information. This is simply not what the Pipeline Families found⁸⁴; instead, most often, the officers interviewed were simply unable to recall the specific details surrounding the finding of the child after the passage of many years when they were not given the opportunity to review the report in order to refresh their recollections. These officers respond to hundreds

⁸² Family 21.

⁸³ *Id.* at Exhibit 12.

⁸⁴ See Family 1 (In response to the allegation that the officer refused to cooperate, “*No one has come physically asking about, but few months ago someone had called me on phone saying from American Embassy. I was on duty and I had asked them to contact later as I was on duty....I had asked them to contact [me] in my leisure, but they did not contact.*”); see also Family 4, (In response to the RFE allegation that the police officer failed to return four phone calls and was evasive, “*Someone had called me on the phone, but no one had come to take information from me physically. The persons making calls said they were from the Embassy. They had asked me whether the child was found or not on so and so date? How could I answer that type of query? I was on duty then. I had told them that I could not be able to respond by phone and asked them to come here with letter [police report] in which my signature was attached supposedly. However they did not come just made phone calls.*”); see also Family 25.

of calls each year, and sadly, finding abandoned children is relatively commonplace in Nepal. Their lack of memory is not an indicator of fraud or deception; it simply signifies the passage of time and unfortunate reality of this impoverished country⁸⁵.

In every case examined, the Pipeline families found the police officers and police stations to be operating in good faith and willing to participate completely with the efforts to confirm the abandonment of the children. Also, in every case examined, the Pipeline families discovered that the U.S. Embassy failed to discover readily available evidence and information that corroborated the contents of the police report or, in very limited cases, otherwise explained the absence of additional corroborative information. As such, the U.S. Embassy's investigative failure was the product of its willful ignorance or inexcusable inattention to details. Most egregious, in the small number of cases where the U.S. Embassy was able to find information and evidence that corroborated the contents of the police report, it chose to discredit the statements of police officers and use the information against the Pipeline Families, raising the evidentiary bar even higher. In sum, the U.S. Embassy either complained that it could not find corroborating information in its investigations into the police, rendering the police report unreliable or that it did find corroborating information, rendering both the report and the police witness unreliable. The Pipeline Families could not win under this arbitrary scheme, and the bias of the U.S. Embassy stands in stark contrast to its legal duty to adjudicate the I-600 Petitions. This type of behavior by the U.S. Embassy is wrong and resulted in needless expense, delay, and suffering for the Pipeline Families and their waiting children.

⁸⁵ See, e.g., Families 10 and 28 (police officer could not recall anything beyond the contents of the record given the passage of time); see also Family 26 (police officer disputes allegations of RFE and provided US Embassy with specific details and offered to show US Embassy investigators the location where the child was found).

b. Orphanages

As with the U.S. Embassy's complaints about the reliability of police reports and availability of police officers, the U.S. Embassy similarly complained about the unavailability of orphanage staff, or the orphanage staff's lack of personal knowledge regarding the finding of the child. In particular, the U.S. Embassy claimed an inability to identify and interview orphanage staff that were physically present on the day the child was admitted and who could corroborate the contents of the police report. The Pipeline Families found, just as with the claims surrounding the police officers, that the U.S. Embassy was wrong more often than not.

In many cases of unavailability⁸⁶, the orphanage workers had left the area and even the country to pursue better employment opportunities. Again, this is simply attributable to a third world country with limited resources, scant education, and transitory employees. Orphanage staff is often illiterate, and record keeping is held in far less regard than caring for the physical and emotional needs of the many children in their care. Furthermore orphanage staff, as an unskilled labor force, is well within the usual Nepali pattern of shifting from one place of employment to another. So it is no surprise, and most definitely not a sign of cover-up or corruption, that orphanage staff had experienced high rates of turnover and the staff present years after a child was admitted were unable to provide first-hand knowledge of the children's admission. Staff had simply left the area and moved on.

With very little effort, Pipeline Families were able to locate the individuals sought, conduct the needed interviews by phone, and obtain the corroborative evidence deemed

⁸⁶ Families 29 and 35.

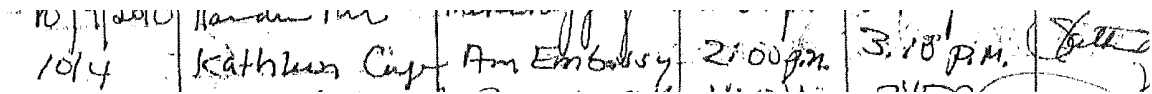
necessary by the U.S. Government. In one case⁸⁷, the orphanage director was on maternity leave when the U.S. Embassy investigators came to the orphanage. However, the orphanage staff provided the director's phone number and told the U.S. Embassy investigator to contact her by phone given her willingness to participate despite her physical absence. Instead of making the call, the U.S. Embassy instead declared her unavailable and stated that the staff present on the day they visited the orphanage lacked personal knowledge of the child's finding and admission.

In addition, the U.S. Embassy complained that orphanages lacked detailed records reflecting the child's "social, developmental or medical histories." In many cases, the U.S. Embassy criticized the absence of guest books or visitor logs, the absence of which it found implied an attempt to cover up birth parent visits to the child. However, just as with the allegations of "irregularities" surrounding the police reports, the Pipeline Families found the U.S. Embassy to have misrepresented the facts and incompetently investigated the circumstances at the various orphanages. In one case⁸⁸, the U.S. Embassy alleged that "[t]he orphanage has stated that no one ever came to visit or claim [the child], but there was no visitor's log to track visits or any detailed records related to the child's activity/progress/medical condition. In the past it is found that orphanages have covered up attempts by biological families to visit their children." These allegations are patently false. The family's investigation revealed that the orphanage maintains meticulous records on each child admitted, including detailed medical records and a departure log that tracks the movement of all the children any time they leave the orphanage for any purpose. These records were

⁸⁷ Family 23.

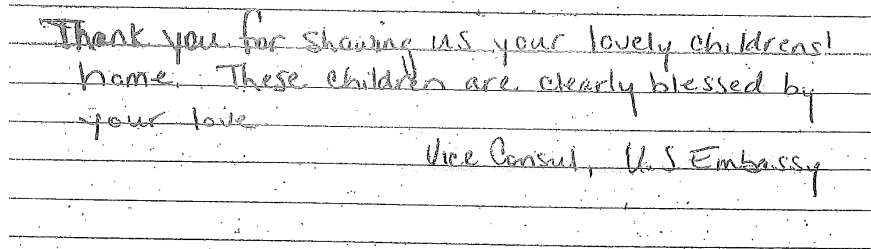
⁸⁸ Family 27.

available to the U.S. Embassy as they were physically stored in the location they visited, and were produced to the Pipeline Family by the orphanage and by the Pipeline Family in response to the RFE. Further, the U.S. Embassy's criticism regarding the lack of guest log cannot be reconciled with its signature in the guest log date October 4, 2010:



Handwritten entry in a guest log. The text includes the date "10/4", the name "Kathleen Cuff", the location "Am Embassy", and two time entries: "2:00 pm" and "3:10 pm". There is a signature to the right of the second time entry.

In another case⁸⁹, the RFE alleged that “when the U.S. Embassy staff asked to see the visitor’s log, the orphanage officials could not provide any visitor’s log...” However, the family was shocked to discovery in their investigation that the visitor’s log was in fact made available to the U.S. Embassy staff during their investigation as evidenced by the US Embassy’s entry in the log from the date they “investigated”:



A handwritten note on lined paper. The text reads: "Thank you for showing us your lovely children's home. These children are clearly blessed by your love." followed by "Vice Consul, U.S. Embassy".

The U.S. Embassy hastily conducted superficial “investigations” and sloppily recorded their “findings” in an effort to substantiate the fraud they suspected to be present in Nepali adoptions⁹⁰. The Pipeline Families, and their children, deserved to have their cases adjudicated

⁸⁹ Family 16; see also Family 4 (the RFE alleged that orphanage staff refused to provide the U.S. Embassy with contact information for the orphanage location where the records were physically stored but the orphanage director denies this allegations entirely “No we have given them contact phone number. We had provided them the business card. What would be difficulty giving them contact of our Nawalparasi representative?”).

⁹⁰ See Family 20, Exhibit P (the Q&A Affidavit used by the U.S. Embassy in conducting an interview with an orphanage director).

fairly and thoroughly by the U.S. Government in accordance with the law. Sadly, such was not the case.

c. Field Investigations

In nearly every RFE examined by this report, the U.S. Embassy complained that it had been unable to identify any local residents with specific knowledge of an abandoned child in the area where the child was found abandoned at the time the child was found abandoned. The RFEs for the Pipeline Families can fairly be divided into two groups on this issue: 1) the U.S. Embassy failed to find any person willing to provide a statement with personal knowledge; or 2) the U.S. Embassy found local residents with knowledge but disregarded their statements. In the cases where no person was found, which represents the vast majority, the absence was cited as a “serious irregularity” that signaled the event did not happen as reported by police. In the cases where an individual provided a statement, the information was inexplicably disregarded in the U.S. Embassy’s search for corroborating evidence.

At the outset, it must be remembered that child abandonment is a crime punishable by at least four years in prison in Nepal⁹¹. Residents are unlikely to admit personal knowledge of a crime to a stranger for fear of being implicated in the criminal activity⁹², let alone sign a sworn statement presented by an American as the U.S. Embassy asked the residents to do. The U.S. Embassy investigation was largely a futile effort at the outset, given both the fear of authority

⁹¹ Nepali Criminal Code (Muluki Ain, 2020 ; Chapter 10; Paragraph 18: "A person who abandons a male or female baby born alive shall be liable to the punishment of imprisonment for a term of Four years. In cases where such a baby is found dead, the person who has so abandoned shall be treated as a murderer. "

⁹² <http://www.cnn.com/2010/WORLD/asiapcf/11/03/aubrey.sacco.nepal/> (“Although giving no indication that they do know what happened, the villagers said people there fear that police would improperly point the finger at them if they signaled they knew anything” regarding a missing US hiker in Nepal).

that permeates the culture in Nepal and the manner in which the investigations were conducted. In one case⁹³, the local residents interviewed were asked specifically whether they would be willing to provide statements to the U.S. Embassy regarding their knowledge of finding abandoned children, and each person indicated that they would not. In another case⁹⁴, the Pipeline Family's investigator found a person cited in their RFE and who told the U.S. Embassy's investigator that she had never heard of any child being abandoned. She revealed to the investigator for the Pipeline Family that she had not been honest in her answer and was in fact aware of a child's finding with remarkably similar circumstances to the finding at issue. Indeed, every local resident interviewed by the Pipeline Family's investigator was aware of a child being found abandoned around the time and near the location where the child at issue had been found.

Wrongly, the U.S. Embassy assumed that the absence of individuals willing to attest to the abandonment of a child meant that no child had in fact been abandoned. Pipeline Families, returning to the sites where the children were found abandoned, were overwhelmingly able to find individuals with knowledge of abandoned children being found in the area generally or with knowledge of their child's specific finding. This is because Nepali nationals conducted the investigations and did so in a culturally sensitive and competent manner. However, almost no person interviewed was aware of the U.S. Embassy's investigations into the abandonment. If

⁹³ Family 2 RFE Response, Exhibits G1 ("No. I don't want to be involved... don't want any problems") and G2 ("No. I would not... I don't want to take any hassle and I have lots of work to do and I do not want to take any time off. "); See also Family 7 RFE Response (When the resident was asked whether she would tell a foreigner about an abandoned baby, she states no, *"It is not in the Nepalese culture to get involved in this kind of subject. So I would say nothing if I was not involved"* in order to avoid *"problems for me and my family"*).

⁹⁴ Family 12.

one were to apply the U.S. Embassy's logic to this set of facts, one would conclude that the U.S. Embassy had not actually conducted investigations at the site of the child's abandonment since few, if any, remembered seeing them or being questioned by them. This error in the U.S. Embassy's logic is emblematic of the U.S. Embassy's paltry investigative efforts and incorrect assumptions.

Despite its flawed techniques, there were several cases reviewed where the U.S. Embassy investigators found people with knowledge of the abandonment. In one such case⁹⁵, the U.S. Embassy was able to locate not one but two local residents who had heard of the finding of an abandoned child by the river a few years earlier. Indeed, according to the RFE, one of the residents even recalled the specific instance where a crowd ran by in response to a child being found abandoned in a jute bag down by the river, which was the exact location and circumstance of the child being investigated. However, rather than deeming these statements corroborative evidence, the U.S. Embassy characterized their statements as "rumor" and inexplicably rejected them as untrue.

Embassy staff discovered two locals who had heard a rumor about a baby found by the river. Many more persons, however, who lived and worked closer to where the baby was allegedly found had no knowledge of a baby being found in the vicinity. While the locals' recounting of a rumor they had heard has some significance, this alone is not enough to show with a preponderance of the evidence that the police report is true or that [the child] is an orphan. The fact that the majority of locals in the neighborhood that were interviewed said that they had never even heard a rumor about an abandoned baby lessens the possibility that the rumor two people alone had heard is true.

These two local residents also allegedly encouraged the U.S. Embassy investigators to travel to a particular restaurant to see whether the owners also had knowledge of the child's finding.

⁹⁵ Family 30.

Unfortunately, the restaurant does not lie on the banks of the river where the child was found, but instead on another river bank that is a two-hour walk away from the location of the child's finding. As such, the U.S. Embassy's investigation centered on the wrong location and their failure to find any additional people with personal knowledge is the result of this mistake, and not indicative of any irregularity in the cases. When a competent investigation was conducted in the right location, just as with all the other Pipeline cases, the Pipeline Family at issue was able to find several people with actual knowledge of the child's abandonment.

In another case⁹⁶, the RFE details the collection of four affidavits from local residents, each of which provide personal knowledge regarding children being abandoned in the area. One person provided a statement detailing a child being found by the side of the river, wrapped in a multi-color cloth. He recounts the involvement of the police and warns the U.S. Embassy investigators that others may not be helpful in the investigation "as many of them move every few months." However, the U.S. Embassy deemed his statements unreliable because the color of the cloth described by the police was white, not multi-colored. Others also recounted a child being found at the relevant time, but the U.S. Embassy discredits their statements as corroborative again because they did not include the white cloth detail provided by the police. Drawing such a line between what is credible and what is not is arbitrary and capricious, and provides yet more evidence that the Department of State had little intention of finding the cases approvable.

In every case examined, the Pipeline Families were able to accomplish that which the U.S. Embassy could not – to corroborate the prevalence of child abandonment in the area

⁹⁶ Family 3.

generally and in some cases to corroborate the circumstances surrounding the specific child's finding. Just as with the U.S. Embassy's investigation into the police and orphanages, the U.S. Embassy's field investigations yielded no better results and provided yet another example of bias and ignorance dictating the adjudicatory outcomes for the Pipeline Families and their children.

B. Impact on Pipeline Families

Without exception, the misguided policy and misconduct of the Department of State exacted a devastating toll on the Pipeline Families and their children, which cannot be quantified or measured.

Most importantly, the children lost precious time when they could and should have belonged in a permanent loving family⁹⁷. As has been undeniably and scientifically established, every day in an orphanage damages a child⁹⁸. An institutionalized child's physical, emotional, and cognitive development suffers. Children living in institutions have been found to have smaller statures, smaller brains, and lower IQs than children living in family settings, not to mention the emotional harm and attachment issues caused by living in an institution. "Children

⁹⁷ Family 11 wrote the following excerpt in an email to their Senator during the difficult wait: "As I wait for her visa, my daughter sits in [an orphanage], where she has resided since she was approximately 3 weeks of age. She was abandoned and so underweight when the police found her that she was placed in an intensive care unit. She has developmental delays that are only exacerbated by her continuing to live in an orphanage. Orphanages struggle to provide the children two meals per day - most cannot afford to serve meat, fresh fruit or milk. These kids are surviving on rice, lentils, and unsafe water. We prospective parents are afraid to send donations to feed the children, because we have been advised to avoid any exchange that might be misinterpreted as a bribe. In this holiday season, when food is abundant and Americans struggle not to gain weight, these children are hungry."

⁹⁸ http://home.comcast.net/~rinelson/International_Adoption_Research_Article.pdf

raised in institutions during early development demonstrate significantly impaired physical, cognitive, language, social, emotional, and brain development” and the longer a child remains in an institution, the more profound the deficits and the more difficult they are to reverse⁹⁹. On average, the RFE process delayed these children coming home to their American families an extra 201 days; over six months where these children were actively harmed by the conduct of the Department of State.

In addition, the Department of State’s actions also damaged the Pipeline Families¹⁰⁰. The parents describe being crippled by feelings of fear, anxiety and helplessness resulting from the actions of the Department of State. In addition to the emotional harm, the Pipeline Families also paid a hefty financial price. The hasty investigations of the U.S. Embassy, riddled with error and misrepresentations, resulted in the issuance of Requests for Evidence for 55 of the Pipeline Families. For each Pipeline family, the cost of re-doing the orphan investigation and preparing a response to the RFE was, on average, \$25,684. This elevated the average cost of each adoption to \$57,167. This cost was not anticipated at the outset of these adoptions, and caused the Pipeline Families extraordinary financial hardship. Some families were even forced to sell their homes or cars in order to satisfy the heavy burden placed on them to respond to the RFE.

⁹⁹<http://www.fireflykids.org/storage/resource.library.docs/ENG.resource.library/ENG.Kids.in.Inst.Care/dj.12.10.beip.eng.pdf>

¹⁰⁰http://www.twincities.com/ci_17064404

FINDINGS AND CONCLUSIONS BASED ON ANALYSIS OF NEPALI PIPELINE CASES

The Department of State had the delegated duty to fairly and competently adjudicate the I-600 petitions for each of the Pipeline Families, yet their actions served only to confound, obfuscate, delay and defy that duty. Based on careful analysis of 40 of the 55 Pipeline Family cases (the “Pipeline Cases”), we have significant concerns with regard to the actions and practices of the Department of State, the Office of Children’s Issues and the Consular staff assigned to U.S. Embassy Kathmandu. Our concerns/conclusions from this experience are as follows:

- The Department of State abdicated their responsibility to the American families adopting orphan children from Nepal. There was little acknowledgement or concern for the tremendous effort and considerable fees these families had to expend. Nor, more importantly, was there appreciation for the worry and anxiety they experienced as their child’s fate hung in the balance. The shoddy work done in the Department’s investigations remains as clear examples of this lack of respect for American citizens who felt they had to work to counter unsubstantiated claims made by their own government in order to save their children.
- There was a total absence of concern for the welfare of orphaned children in Nepal and the American families seeking to adopt these children by the Department of State. This is evidenced in the decision to suspend all abandonment cases; regardless of the length of time a child had lived in an orphanage or the evidence available to support a child’s

orphan status. Every child is precious, and deserving of a chance to be raised by a loving family. Blanket decisions, such as the one made to end adoptions from Nepal, need to be based on clear and incontrovertible proof that fraud is taking place and that there is clearly no way at all to know if a child is truly an orphan. Absent such proof, adoption should continue to be allowed on a case by case basis. When international adoptions are suspended from a country, the parentless children of that country are denied an important avenue that can lead to a permanent and loving family. The actions of the Department of State also showed a basic lack of respect for Nepal and its culture. We have seen no indication that the Department of State attempted to work with Nepal to address its concerns or to gain greater insight into local practices and customs. The outright dismissal of documentation and the total disregard for statements of witnesses and officials is inappropriate. There was no attempt to improve the Nepali system by the Department of State; instead a course of action was followed that offended the Nepali people, who were misrepresented throughout the RFEs and characterized as elusive, unreliable, and lacking credibility.

- The Department of State advised Adoption Service Providers (ASP's) that their accreditation status would be put at risk if they continued to operate in Nepal. The Department of State is responsible for accrediting ASP's as well as setting adoption policy as our Central Authority. In the case of Nepal, ASP's offered little objection or challenge to the Department's decision to close the country. Dissent was not practicable for agencies that risked being accused as "child traffickers" by the very entity upon whose approval they are dependent in order to continue serving children. ASP's

have valuable perspectives and experiences and they should have been encouraged to participate in addressing the concerns of the Department of State, and in formulating and critiquing adoption policy without concern of retribution.

- Observations in Nepal make it clear that the Department of State has applied a more restrictive legal standard than is supportable under U.S. law, and that its focus seems to be on administrative compliance rather than the best interests of children. As shown in this report, consular personnel made misleading and incorrect statements to families, the public, and Members of Congress. The investigations conducted by the US Embassy were tragically flawed. Instead of seeking the truth in each case, these officials seemed to be playing out a carefully orchestrated role to justify the closure of international adoptions from Nepal.

Adoption is a child welfare issue, and as such, specialists with child welfare expertise should be responsible for processing international adoptions. There is no one in the Department of State who possesses the requisite expertise currently assigned to the Office of Children's Issues or Consular Affairs in Kathmandu. We believe this lies at the heart of the issues in Nepal and in other countries. The attitude within the Department of State is to treat the professionals responsible for providing adoption services and the foreign governments as fraudsters, with the need to prove themselves and their cases innocent, starting the adjudication of orphan visas at "No" far too often.

An objective analysis of the facts, detailed in full in the Both Ends Burning Report, leads one inexorably to the conclusion that the Department of State decided without any substantial

evidence to support its decision, to end international adoptions from Nepal. Based on the facts presented in this report and the evidence provided to USCIS by the Pipeline Families that no fraud was occurring, the Department of State and USCIS should have re-evaluated their policy, lifted the suspension, and allowed adoptions from Nepal to resume. But the Department of State has steadfastly refused to re-open Nepal for adoption, clinging still to its unsubstantiated allegations of widespread fraud¹⁰¹.

Both Ends Burning believes the facts show that American adoptions from Nepal should never have been suspended and at minimum should be reopened to American families since no fraud has been demonstrated. Both Ends Burning asks Congress to review the actions taken by the Department of State and USCIS in suspending adoptions from Nepal and to pursue the lifting of the adoption suspension. The abandoned and deserted children of Nepal deserve to have the chance of being raised by a family and there are hundreds of American families willing to welcome them with open arms. An arbitrary decision by two U.S. government agencies, not based on substantial and documented evidence, should not permanently destine homeless children to life without a family to love and care for them.

¹⁰¹http://adoption.state.gov/country_information/country_specific_alerts_notices.php?alert_notice_type=notices&alert_notice_file=nepal_5