

ACTION VO-00

INFO	LOG-00	CA-00	CIAE-00	INL-00	DS-00	OIGO-00	FBIE-00
	UTED-00	H-00	TEDE-00	L-00	NSAE-00	OCS-00	CAEX-00
	CFPP-00	DOHS-00	ECA-00	DSCC-00	SCA-00	NFAT-00	SAS-00
	/000W						

-----9F1777 070228Z /38

R 070141Z MAR 06
 FM AMEMBASSY KATHMANDU
 TO SECSTATE WASHDC 0591
 INFO AMEMBASSY NEW DELHI
 AMCONSUL GUANGZHOU
 DEPT OF HOMELAND SECURITY WASHINGTON DC

RELEASED IN PART
B6

UNCLAS KATHMANDU 000625

SENSITIVE

DEPT FOR CA/VO/L/A: FRIEDLEIN, NYSTROM, CI: SAINT VICTOR,
 LAMORA, CA/FPP: KENDRICK, SA/INS: GOWER
 NEW DELHI PLEASE PASS TO DHS/USCIS

E.O. 12958: N/A
 TAGS: CVIS, CASC, KFRD, KOCI, NP
 SUBJECT: ADOPTION IN NEPAL CONTINUES TO BE PROBLEMATIC

- REF: A) 03 Kathmandu 01798
- B) 04 Kathmandu 2039
- C) 04 Kathmandu 2420
- D) 05 Kathmandu 1072
- E) FREIDLEIN/SPENSLEY EMAIL 22FEB2006

SUMMARY

1. (SBU) Adoptions in Nepal continue to be fraught with inconsistencies. There have been several cases where the child ultimately appears to be an orphan as defined by U.S. law, but the process through which the child is relinquished and sometimes selected for international adoption has caused serious concerns. Procedures for foreign adoptions in Nepal are unpredictable and the Government of Nepal (GON) requirements are not enforced in a uniform manner. Fees vary depending on which orphanage is used, as well as on who assists the adoptive family and the child being adopted. Fabricated documents or real documents fraudulently obtained are readily available and often at variance with the facts of the case as related by orphanage personnel or adoptive

parents. As a result, the U.S. Embassy in Kathmandu must carefully investigate adoption cases to determine whether the child meets the definition of an orphan under U.S. immigration law. END SUMMARY.

UNCLASSIFIED

ADOPTION TRENDS

2. (SBU) The number of adoptions continues to climb in Nepal. Post approved 63 cases in FY05 and expects to see at least a similar number in FY06. Most of the cases come from three orphanages in Kathmandu [REDACTED]

[REDACTED]. Nearly 70 percent of the children adopted from Nepal in the last year were female. In almost every case, the child was found abandoned (according to the documents presented to the GON), and there was limited information available about the details of the child's orphan status. Of the 63 cases from FY05, Post has orphan status data on 54 children. (NOTE: Post recently began keeping and compiling detailed records of adoption cases to track trends. END NOTE.) Of these 54 children, 53 were abandoned (56 percent of these on the street), and only one child was an orphan because the parents were deceased. Abandonments are rare in Nepalese culture, where extended families support grandchildren, nephews and nieces. In cases where the child is abandoned, the documentation is almost always limited, and in some cases fraudulent. During some investigations Post has uncovered material differences between the information reported to GON and the true circumstances surrounding cases of abandonment.

B6

3. (SBU) Adoptions continue to be problematic and fraught with inconsistencies. In addition to the concern over the origins of children who were reportedly abandoned with limited documentation, Post is also concerned by false police documents presented to and accepted by GON to certify children as orphans; by questionable practices of at least one local adoption facilitator; by as yet unsubstantiated allegations by GON officials and others involved in the adoption process that money is being exchanged throughout the process; and by the lack of a clear and transparent process within the government offices and orphanages dealing with adoptions in Nepal. Almost all cases require some sort of investigation, consuming a substantial amount of time. Field visits and detailed interviews with caregivers, orphanage directors, government officials and others are often required. Adoptive parents, meanwhile, have no incentive to share

UNCLASSIFIED

information with the U.S. Embassy, recognizing that discrepancies in information will be carefully investigated by Consular personnel during and after the visa interview.

4. (SBU) In cases of abandonment, Post is often unable to confirm the genuine circumstances surrounding the child's orphan status through an investigation or through information obtained from contacts. In some cases Post is provided additional information by the orphanage, by a local adoption facilitator, by the adoptive parents or by Ministry of Women, Children and Social Welfare (WCS) contacts. As fraudulent documents and real documents fraudulently obtained are readily available, it is very

difficult to confirm death certificates or any other document required for the orphan determination process. In fact, Post is aware of several cases where documents and the information obtained by the Consular Officer at the time of the interview contradicted the information presented to the GON. It is our experience that no case is clearly approvable without some form of investigation. In most cases, the issues and discrepancies in the case can be resolved by an investigation at Post, in consultation with DHS New Delhi.

NEPALESE ADOPTION LAW

5. (SBU) The current adoption laws in Nepal went into effect on June 20, 2000. WCS holds the primary responsibility regarding international adoption for GON. There is also an international Adoption Committee, which shares in the responsibility of adjudicating adoption applications. The Committee reviews adoption applications and is charged with ensuring that the cases conform to current adoption law. The cases are then forwarded to WCS for final approval. WCS does the administrative processing of cases including logging them, and compiling documents. Only children defined as 'orphans' (see paragraph 8) by Nepalese law are eligible for international adoption.

6. (U) The Committee is composed of the following members:

- Joint Secretary, Ministry of Women, Children and Social Welfare, Coordinator;
- Representative (Joint Secretary Level), Home Ministry, Member;
- Representative (Joint Secretary Level), Law, Justice

and Parliamentary Ministry, Member;
--Representative, Federation of Non-Government
Organization for Children, Nepal, Member; and,
--Under Secretary, Legal Section, Ministry of Women,
Children and Social Welfare, Member Secretary.

7. (U) The law allows children of either gender under the age of 16 to be adopted by foreign nationals. Any foreign national wishing to adopt a child from Nepal must have been married for at least four years prior to filing an application, and at a minimum one parent must be infertile. A single, widowed, divorced, or legally separated foreign woman between the age of 35 and 55 may also adopt a Nepalese child if she does not have a child of her own. If adoptive parents already have a child, they can only adopt a Nepalese child of the opposite gender and the adoptive child must be younger than the child already in the family. Siblings or twins of the opposite sex can be adopted together. The age difference between adoptive parents and the adoptive child must be at least 30 years. Adoptive parents who already have two children may not adopt in Nepal, as under Nepalese law, the total number of children in a family after the adoption cannot exceed two.

DEFINITION OF ORPHAN

8. (U) Under Nepalese law, an orphan is defined as a child: whose biological parent(s) or legal guardian has irrevocably released him/her; whose parents are no longer alive; whose father has died and mother has run away with another man; whose father has not been located and mother is unable to provide proper care; whose mother vanished from the hospital where the child's birth took place or a child who was found abandoned by the police on the street and admitted to an orphanage.

9. (U) Children of single mothers, or married mothers who have been left by their husbands, will not be eligible for adoption unless a mother identifies the father and he agrees, either willingly or through a court order, to relinquish the child. There are no exceptions to this rule. Fathers have 12 years from the birth of the child within which they may claim a child. In cases of rape or incest, the mother must still identify the father, he must be contacted, and agree to relinquish the child. When a woman becomes pregnant out of wedlock, she is not able to relinquish the child for adoption without the father's permission and must name the father in order for

him to agree to a relinquishment. UNCLASSIFIED

10. (SBU) Children are eligible to be adopted in Nepal either after they have been abandoned or relinquished by their parents. In cases of relinquishment, Nepali law requires that the birth parents already have another child. Both birth parents must be party to the relinquishment. Post believes that almost all cases of children adopted from Nepal are presented as abandonments to circumvent the rule that the father has a claim of paternity for 12 years and because it is so difficult to relinquish children. (NOTE: According to officials at WCS and contacts at local orphanages, this relinquishment law is regularly circumvented by falsifying abandonment. END NOTE.)

ORPHANGES ON EVERY CORNER

11. (SBU) According to WCS, as of February 2006, there are more than 400 orphanages or children's institutions in Nepal. Of these, there are currently 25 orphanages that are registered with WCS and 'certified' to process international adoptions. (NOTE: A close contact at WCS informed Post there are an additional 10 to 25 orphanages in the process of registering with the Ministry to perform international adoptions. END NOTE.) Most of these orphanages are private organizations that have opened in the past three years. Many of the orphanage directors have no previous social work or childcare background.

12. (SBU) In a recent study conducted by Post of the orphanages certified by GON, WCS was unable to provide updated contact information or registration information on seven orphanages (about 30 percent). Only eleven of the 25 orphanages certified by WCS to process international adoption were able to provide an approximate number of children currently resident in the home, and of these only six could estimate the number of children eligible for international adoption. In these six orphanages the children eligible for international adoption ranged from 75 to 100 percent of the total children in the home. Moreover, we discovered that many of these orphanages had poorly maintained their records and had only skimpy information concerning the children in their custody. Many of the orphanage 'directors' are figureheads only, and not involved in the day-to-day work at the home.

UNCLASSIFIED

13. (SBU) The matchmaking process is also difficult to understand. Matches are made at the orphanage level, but it is often not transparent how these matches are made, or by whom and at which stage of the process. In addition, some orphanages work with more than one U.S. adoption agency, and the relationships between the U.S. agencies and the orphanage also remain unclear. In one case, neither of the 2 U.S. agencies involved appears to fully understand the matchmaking process. And in a conversation with a Consular Officer, one U.S. agency stated that they believed the matches were not transparent, and that while they had asked for clarification on the process, the orphanage had been reluctant to provide any additional information. In one recent case it appears that the adoptive parents selected the child that they wished to adopt from the orphanage and then were able to be matched with that child. Orphanages often have no income other than the fees and donations raised through international adoption. Fourteen of the orphanages contacted in the recent study by Post could provide numbers on completed international adoptions, both to the United States and to other countries. These 14 orphanages reported a total of 392 total international adoptions with 175 children being placed with U.S. families (approximately 45 percent).

14. (SBU) While all orphanages that do international adoptions must be certified by GON, it remains unclear what standards are required for certification and how well these regulations are enforced. Post is also concerned with the growing numbers of orphanages in Nepal. Post is aware of at least one orphanage director who appeared to open the home only to make money from the relatively high fees he can earn from international adoptions. (NOTE: An orphanage director can make more money from one completed international adoption than from many other businesses in Nepal. END NOTE). All of the orphanages processing international adoption cases for the U.S. are located inside the Kathmandu Valley.

ORPHANAGE REQUIREMENTS

15. (SBU) Orphanages are required by GON to maintain a file on each child containing: 1) a copy of the identification document of the person who brought the child to the orphanage for admission and a signed written statement (or deed) from the person certifying that the child is an orphan; 2) if the child is brought from a government hospital, the child must be accompanied with a

certification explaining the circumstance of the abandonment; and 3) if the child is found on the street by the police, then the child must also have a letter from the Chief District Officer (CDO) declaring the child an orphan. (NOTE: the CDO is responsible for all administrative issues in a district, such as directing and coordinating the police force, citizenship determinations/registrations, enforcing/implementing government rules and regulations and supervising all civil servants in his or her district. END NOTE). The orphanages are also required to run a notice in a national newspaper for 21 days with information about the child to allow biological parents an opportunity to claim the child. The Women's Cell of the Nepalese Police must then certify that no one has come forward to claim the child. (NOTE: These are the documents required for GON to process the child for international adoption. Orphanages have an incentive to produce false information to allow children in the orphanage to be defined as orphans under Nepalese law and then be placed for international adoption, as often these international adoptions are the only source of income for the orphanage. END NOTE.)

16. (SBU) While single mothers may bring children to the orphanages, they often identify themselves as a friend of the mother, or simply leave the child outside the building, refusing to answer questions or present the required identification card. Orphanages apparently do not question these women, as it would then necessitate the tracking down of the fathers to make the children eligible for international adoption. Many of the children in orphanages are documented as found by the police who "find the child while on patrol" or abandoned on the street. Post is not aware of any orphanages which pursue investigations or make attempts to locate birth parent(s).

17. (SBU) In one recent adoption, the information presented in the advertisement contained incorrect information that would have made it extremely difficult for the birth mother to identify her child. A highly-placed government official told a Consular Officer that the police are paid by the orphanages to bring children to them, but Post has not been able to confirm this allegation.

REFORMS, BUT WHEN?

18. (SBU) As reported Ref C, in 2004, the former Minister of WCS attempted to reform the adoption law to improve transparency and increase oversight of the adoption process. However, she stepped down due to a change in the government before she could enact any changes. While there was a review of the adoption process, and a taskforce report, there were no new measures of any sort put into place. (NOTE: The Minister at WCS has changed three times in the last two years. Most recently, Ms. Durga Pokharel was appointed Minister of WCS in December 2005. END NOTE.)

COORDINATION WITH DHS

19. (SBU) Post works with DHS New Delhi on cases where there are discrepancies between the information presented in the documents to GON and the information presented at the time of the interview or discovered through an investigation. Post often collaborates with DHS via email and phone, discussing the details of adoptions in general as well as on specific cases. If Post is able, through an investigation, to reach the determination that the child appears to be an orphan as defined by U.S. law (despite discrepancies in the case), Post writes a memo detailing the results of the investigation and usually

holds a conference call with DHS New Delhi to discuss the results and the determination of orphan status. Post then issues the visa without sending the case to New Delhi. However, if the child's orphan status is not clear, Post writes an investigation memo and sends the case to New Delhi for review as not clearly approvable. Post then continues to work with DHS to provide any additional information or support to resolve the discrepancies.

COMMENT

20. (SBU) Post is acutely aware of the win-win nature of international adoptions and has devoted considerable time and resources to do due diligence in each case and to sensitize GON of the problems in their system. While the diplomatic community, Non-Governmental Organizations and elements of GON have made recommendations on necessary changes to GON, the needed political will to make and enforce new regulations has not been forthcoming. Given the dramatic increase in the number of adoptions in Nepal, the lack of transparency and potential financial

UNCLASSIFIED

benefits from processing international adoption cases, Post is taking a number of steps to attempt to ensure that the growing number of adoptions do not lead to child trafficking or child selling. Post is working to broaden contacts and develop additional means to ascertain the status of the children who are pending adoption to American families, but this has proven difficult because there are so many players who stand to gain financially from each and every international adoption. Moreover, Post has been working with other Embassies and concerned parties, such as UNICEF, to develop recommendations for WCS. Meanwhile, this effort has benefited from ongoing conversations with the Department and DHS in New Delhi and Washington over specific cases and the problems in the international adoptions in Nepal.

Moriarty

NNNN

UNCLASSIFIED