

PEAR Response to the August 6, 2010 Suspension of Adoptions from Nepal to the US

On August 6th, PEAR participated in the conference call held by the USDOS and USCIS in which they jointly announced their decision to suspend processing cases of anonymously abandoned children in Nepal. PEAR is saddened by the necessity of a suspension in Nepal. We believe that the best place for a child to grow is in a loving home. For the legitimately abandoned orphans in Nepal, a suspension will mean the delay or a loss of a permanent home for these children.

Because it is so important for children who need homes to find homes, we believe that inter-country adoption can have a place in a country's child welfare plans. However, we strongly believe that adoption needs to be in the best interests of the child – and therefore all steps must be taken to ensure that all children placed are *truly in need of homes*.

Unfortunately, Nepal has a long history of corruption in its inter-country adoption program. There are many documented cases of children placed in orphanages for *temporary care* being adopted internationally without their parent's consent. In countries with limited social welfare systems, like Nepal, a temporary orphanage placement is often the only option available to a parent during a crisis. It should not, however, lead to the child being placed for adoption without the parent's consent.

PEAR hoped when the new program opened in 2009 that would mean a fresh start for the Nepal inter-country adoption program and a reduction in the kind of corruption and ethical violations that had previously plagued many adoptions from Nepal and resulted in the May 2007 closure. Our hopes seem to have been misplaced.

The Reasons

According to the USDOS¹ and news reports², one of the children referred to the first three US families traveling to Nepal was a child whose parents were searching for her. This little girl, Karuna, was placed in the orphanage by her parents for temporary care. Her identity was changed; she was declared to be an abandoned child; a false police report was created; and she was referred for adoption to a US family. Meanwhile, the parent's requests for her return were refused by the orphanage several times. The prospective adoptive family was in Nepal when Karuna was finally returned to her parents.

On June 22, 2010, eKantipur.com published an article about Smriti³, a girl whose mother placed her in an orphanage for temporary care. During a regular visit to the orphanage to see her daughter, the mother learned Smriti had been adopted by a family in Italy. Her abandonment documentation is alleged to have been falsified. On June 25, 2010, Italy suspended adoptions from Nepal⁴.

The USDOS reports that, in recent months, there have been more cases of allegedly "abandoned" children – whose families were actively searching for them – being

referred for adoption with falsified abandonment documentation. Given the small number of adoptions cases reviewed, this is a shockingly high percentage.

When a child is truly abandoned and turned over to an orphanage as an unknown child, documents are generated. There will be reports of whoever found the child and where the child was found. There will be a police report of the finding and a newspaper report alerting the community of the lost child. Eventually, if the parents cannot be found, new identity documents will be created. The USCIS (*and* the prospective adoptive parents) need to be able to rely on the authenticity of these documents. These documents need to reflect the real situation of each legitimately abandoned child.

Due to the falsifications in some paperwork, the USCIS conducted field reports to investigate the documents submitted for abandoned children. Either they were unable to confirm how and where the child was found and/or they were prevented from speaking with Nepali officials named in the documentation. The documents submitted could not be relied upon to reflect the child's true situation, and therefore the child could not meet the legal criteria for an orphan visa.

In other words, USDOS has reason to believe that the entire chain of paperwork for some alleged orphans in Nepal is fraudulent. Compounding the allegedly fraudulent documents is the refusal by Nepali officials to reasonably investigate claims concerning the legitimacy of documents or to cooperate with USDOS.

The Warning Signs

The USDOS has issued at least 7 Notices and Alerts about adoption in Nepal since June 2009. These increased in severity: from concern about the safeguards in the new adoption procedures; to warning Adoption Service Providers (ASPs) not to accept new clients; to advising prospective adoptive parents (PAPs) to change to a different country; and finally to the suspension. In the Appendix, PEAR has excerpted important text from these Notices and Alerts.

PEAR believes that whenever the USDOS issues a warning about adoption issues in a sending country, it should be read with the utmost scrutiny by PAPs, as these warnings are not issued unless there is a specific cause for concern. As USDOS does not usually archive its warnings, it may be difficult for PAPs to notice that the warnings have been changed or updated.

PAPs should also be aware that it is highly unusual for USDOS to issue so many warnings about one country's program within such a short period of time. For example, of 67 USDOS Notices and Alerts that PEAR has posted from 2008 to 2010, at least 7 have been for Nepal. It is very significant that over 10 percent of the USDOS alerts/notices have pertained to one newly opened program.

The Nepal Program 2009-2010 and Available Children

When the Nepal program reopened in 2009, there was a huge rush of ASPs to open programs there, as well as a rush of PAPs to submit dossiers in Nepal. Nepal licensed 63

ASPs in 2009, and an additional 19 in 2010. In an April 12th eKantipur article⁵, MoWCSW officials reported that there were 534 registered adoption applications, and only 520 children available for adoption. In addition, while 90 percent of the US applications requested a child under 18 months, most of the registered children were 3 years or older.

Similarly, a 2005 study⁶ on children's homes in Nepal surveyed 335 children's homes with 8,821 children under age 18. The author estimated 80% of all the children's homes in Nepal were surveyed and that the data would be representative of the unsurveyed homes⁷. Seventy percent of the children were in regular contact with their families⁸. Only 1 percent of the children had no information about the parents⁹. Fifty-nine percent were 10 years or older and only 7 percent were under age 5¹⁰. Twenty percent of the 8,821 children were double orphans¹¹ who might qualify for adoption under Nepal's laws, but presumably, the majority of these children were over age 10.

Clearly, there was a mismatch in the information provided to PAPs about the number and ages of children in Nepal available for adoption.

We believe that Nepal should not have licensed additional ASPs in 2010, given the lack of legally available children and completed adoptions for already licensed ASPs.

We also believe that responsible ASPs should not have promoted Nepal as a viable alternative for most families considering inter-country adoption once the current problems were officially brought to light in September 2009.

Unethical Adoptions and Wrongful Referrals, Past and Present

We encourage you to read the recent articles about Karuna's reunion with her family, Smriti's adoption, and the historical articles about Nirmala Thapa's three children¹², Sunita Bhattarai's son¹³, Mitra Bahadur Thapa and Rama Karki's son,¹⁴ and Padam Bahadur Shahi's son¹⁵. These children and their parents were permanently separated by an unethical child placement system.

The Nepali closure in 2007 was brought about by the numerous reports of children adopted illegally, including the situations referenced above and of an allegedly abandoned 6-year-old girl who told embassy personnel that she was 8, had a family, and did not wish to be adopted¹⁶.

Children reported to be "abandoned" plunged after the May 2007 closure, as documented by both Nepali police Women and Children Service Centre (WCSC) data¹⁷ and Gorkhapatra newspaper publications¹⁸ of abandonments. This data supports the evidence that abandonments were falsified specifically to place children for inter-country adoption.

The ASPs and Their Member Organizations

We believe that ASPs and their member organizations played a role in creating the situation in Nepal by failing to properly present the Nepal adoption program to their

clients, including the lack of children available in the age range most requested, the warnings issued by DOS, the limitations and known fraudulent paperwork of the Nepali system, and its history of corrupt practices. ASPs who continued to promote and recruit prospective adoptive parents for Nepal after the DOS issued warnings opposing this should be held accountable for the pain and financial loss these families are suffering.

- We encourage ASPs to take responsibility for their role in this situation by allowing PAPs to transfer to another program or offering full refunds.
- We encourage ASP member organizations to hold their members to higher ethical standards and to actively promote ethical adoptions.

We understand that the JCICS, an ASP member organization, is requesting full contact and personal information from affected PAPs and asking them to allow JCICS to advocate for them. While we fully support every PAP's right to seek assistance, we question the role of the JCICS in attempting to clean up a problem that was encouraged by its member organizations. What did the JCICS do to encourage ethical behavior by ASPs and the Nepali officials in order to prevent the suspension, particularly in light of the repeated and increasingly severe warnings by USDOS beginning in June 2009?

Our Suggestions

- PEAR encourages PAPs who had hoped to adopt from Nepal to join together with other PAPs and explore avenues for promoting the reopening of Nepal under an ethical and transparent process that supports and respects the entire triad, not just the ASPs and their in-country facilitators, orphanages, and Nepali officials. We are willing to speak with any and all families and to assist them in exploring ethical avenues for assistance.
- We hope Nepali officials will cooperate with USCIS investigators, especially in the cases of children referred prior to the deadline.
- We advise families that while there is no suspension for legally relinquished children, this process is very difficult in Nepal and rarely happens. The USDOS reports that there have been no relinquished children submitted for adoption by US parents since the program re-opened in 2009¹⁹.
- We advise families who are officially matched with children, and who also choose to proceed with the adoption, to be patient and expect long delays while in Nepal and understand they may not be successful if they proceed.

We are certain that PAPs want to provide a home for a child who needs a one, and not for a child stolen, tricked, or coerced from another family.

Approved and Adopted by PEAR Board August 14, 2010

¹ USDOS, *Nepal Adoption Notice*, (Feb 17, 2010), <http://pear-now.blogspot.com/2010/02/update-dos-notice-nepal.html>

² Claire Cozens, *Nepal's stolen children point to flawed system*, (Agence France-Presse, Mar 1, 2010), http://www.google.com/hostednews/afp/article/ALeqM5iIUZUMX_Fr6i4kput6sr6DfX3ZAg?index=1

Om Astha Rai, *Dalit couple foils adoption of offspring*, (Republica, Feb 24, 2010), http://www.myrepublica.com/portal/index.php?action=news_details&news_id=15599

Gopal Sharma, *International adoption resumes for Nepalese children*, (Reuters, Sep 10, 2009), <http://in.reuters.com/article/idINDEL52783520090910>

³ Pratima Baskota, *Fake police document to adopt a girl*, (eKantipur.com, Jun 22, 2010), In Nepali: http://www.ekantipur.com/kantipur/news/news-detail.php?news_id=219779, English translation at: http://www.brandeis.edu/investigate/gender/adoption/docs/FakePoliceDocumenttoAdoptaGirl_Kantipur22June2010.doc

⁴ Commission for International Adoptions, (Italy, Jun 25, 2010), <http://www.naaa.it/naaa/html/modules/Downloads/Nepal-1.pdf>

⁵ *Baby dearth snags adoption*, (eKantipur.com, Apr 12, 2010), <http://www.ekantipur.com/2010/04/12/most-popular/Baby-dearth-snags-adoption/312193/>

⁶ Rudramati Marg, *Study of Children in Children's Homes in Nepal*, (June 2005), <http://www.measuredhs.com/pubs/pdf/OD35/NepalStudyOfChildren.pdf>

⁷ Ibid. page 41

⁸ Ibid. page 39

⁹ Ibid. page 50

¹⁰ Ibid. page 26

¹¹ Ibid. page 27

¹² IRIN, *NEPAL: Concern rising over illegal adoptions*, (Sep 2, 2008), <http://www.irinnews.org/Report.aspx?ReportId=80117>

Lucia Mari Bueno, *Un drama lejano: los niños vendidos de Nepal*, (El Pais, Sep 17, 2004), http://www.elpais.com/articulo/reportajes/drama/lejano/ninos/vendidos/Nepal/elpdomrpi/20041017elpdmgrep_6/Tes

¹³ Alessandro Gilioli, *Premiata Macelleria delle Indie*, Chapter 24: *Mercanti di Bambini*, (Rizzoli, 2007), <http://gilioli.blogautore.espresso.repubblica.it/2007/09/06/mercanti-di-bambini/>

Joseph Aguetant, Andrea Koller, Anand Tamang, Moni Shrestha, and Marlene Hofstetter, *Adopting: the rights of the child, A study on intercountry adoption and its influence on child protection in Nepal*, (UNICEF and Terre des homes Foundation, Aug 2008), <http://www.tdh.ch/en/documents/adopting-the-rights-of-the-child>, Page 40

¹⁴ Bueno, *Un drama lejano: los niños vendidos de Nepal*, op. cit.

Razen Manandhar, *Duped whammy: Torture Follows trickery*, (The Himalaya Times, Sep 25, 2004), http://www.stichting-veldwerk.org/projecten02_e/nepali_children_homes.html or http://tdhf.ibernet.com/cast/..%5Cboletines%5Cpdf%5C_200410_boletin7.pdf page 6

¹⁵ Thomas Bell, *On Sale*, (Nepali Times, Issue 339, March 9, 2007), <http://www.nepalitimes.com.np/issue/339/Headline/13300>

Lekhnath Pant, *Irregularities rife in adoptions*, (Kathmandu Post, Mar 8, 2007),

¹⁶ Aguetant et al., *Adopting: the rights of the child*, op. cit., page 8

¹⁷ Ibid., page 20

¹⁸ Ibid.

¹⁹ USDOS, *Nepal Adoption Suspension: Frequently Asked Questions*, (Aug 6 2010), <http://adoption.state.gov/news/NepalFAQ.html>

Appendix

USDOS Adoption Alerts and Notices for Nepal 2009-2010

USDOS does not publicly archive Adoption Alerts and Notices. You may find the complete text of each notice on the PEAR Blog links shown, or at <http://pear-now.blogspot.com/search/label/Nepal>

Jun 5, 2009: *Prospective adoptive parents should be aware that Nepal suspended intercountry adoptions in 2007 because of serious irregularities as well as credible claims of fraud and possible child-buying. It is not clear that the new adoption procedures will provide sufficient safeguards to ensure that intercountry adoption procedures will be transparent and will adequately protect the rights of children, birth parents, and adoptive parents.*

<http://pear-now.blogspot.com/2009/06/update-dos-notice-on-nepal-june-5-2009.html>

Sep 29, 2009: *As part of required processing for orphan adoption cases, the Embassy conducts a thorough investigation of each case. Prospective adoptive parents should be aware that the investigation process may take several months, which could mean that prospective adoptive parents who travel to Nepal before the investigation is completed will need to spend a significant amount of time in country.*

<http://pear-now.blogspot.com/2009/09/dos-adoption-notice-nepal.html>

Feb 17, 2010: *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 child in question was not a true orphan and that the child's biological parents were actively searching for the child. We caution prospective adoptive parents who have yet to choose a country that the intercountry adoption system in Nepal is not yet reliable.*

<http://pear-now.blogspot.com/2010/02/update-dos-notice-nepal.html>

Apr 9, 2010 Caution About Pursuing Adoption in Nepal: *The U.S.*

Department of State strongly discourages prospective adoptive parents from choosing adoption in Nepal because of grave concerns 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.

and

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

<http://pear-now.blogspot.com/2010/04/update-dos-adoption-alert-nepal.html>

May 4, 2010 Caution About Pursuing Adoption in Nepal: *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.*

<http://pear-now.blogspot.com/2010/05/nepal-adoption-alert-u.html>

May 26, 2010 Caution About Pursuing Adoption in Nepal: *The Hague Conference on Private International Law recently released a report on its Intercountry Adoption Technical Assistance Program, based on a visit by a delegate from the Hague Conference's Permanent Bureau to Nepal in November 2009, available at (http://www.hcch.net/upload/wop/nepal_rpt09.pdf). This report is the result of an independent analysis of Nepal's intercountry adoption system under the new Terms and Conditions put in place in 2008. The report details a number of weaknesses in Nepal's adoption system, including ongoing concern about the falsification of documents, improper financial gain, and lack of a child protection system.*

Although the U.S. Embassy in Nepal has only seen a handful of adoption cases since the new Terms and Conditions went into effect, we share many of the concerns outlined in the Hague report.

<http://pear-now.blogspot.com/2010/05/update-dos-adoption-alert-nepal.html>

August 6, 2010 USCIS/DOS Joint Statement: U.S. Suspends Processing New Nepal Adoption Cases Based on Abandonment: *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 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.*

<http://pear-now.blogspot.com/2010/08/uscisdos-joint-satement-us-suspends.html>