SAVE adoptions

Intercountry Adoption Decline

2004	22,989
2005	22,726
2006	20,275
2007	19,601
2008	17,449
2009	12,744
2010	11,058
2011	9,319
2012	8,667
2013	7,092
2014	6,438
2015	5,647
2016	5,370
2017	???

February 19, 2018

The Honorable Carl C. Risch
Assistant Secretary of State for Consular Affairs
U.S. Department of State
2201 C Street NW
Washington, D.C. 20520

Dear Assistant Secretary Risch,

You have allowed me the opportunity in the past to speak about concerns the adoption community has regarding the Office of Children's Issues leadership. Below, I would like to illustrate one of the most tangible examples of how OCI is directly harming children. Nowadays, nearly every child from China is pre-matched with an adoptive family from a shared photo list. China implemented this procedure in order to prevent chaos and get more special needs children adopted in a timely manner. OCI recently shocked the adoption community by declaring this practice a violation.

In a supplemental list of FAQs issued on February 13, 2018 regarding the timing of payments to IAAME, your new accrediting entity, the Office of Children's Issues made the following statement:

> **Q: At what point in the application process does a prospective adoptive parent "count" as a new case that must be reported to IAAME for the purpose of M&O fee accrual?**
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> Most ASPs use a model in which the prospective adoptive parent submits an application to the ASP, and when accepted as a client, pays fees and signs/submits contracts and other documents to the ASP. Under this model, the acceptance of the new case would be the trigger to report to IAAME. IAAME is aware that some agencies use alternative procedures. In this event, the client is considered to have been accepted into the program, and the case should be reported, *at the first stage that the ASP acts as a primary provider.* This may include, but is not limited to, the time at which fees are collected, contracts are signed, or any adoption services are provided, including the identification of a child.
>
> *In response to a specific question received from an ASP, the Department notes that a "soft referral" is not acceptable practice under the regulations and may lead to adverse action.*

The same day that this set of FAQs were released, an ASP sent a question to the Office of Children's Issues asking them to define "soft referral" as used in the above FAQ. The response two days later was as follows:

A "soft referral" is a term commonly used by ASPs to describe matching a child to a family, either formally or informally, before the appropriate and required precautions have been completed, including the home study, associated background checks, and confirmation of the child's eligibility to be adopted through the intercountry process.

Although "referral" is not defined in the regulations, this activity falls within the adoption service of "identifying a child for adoption and arranging an adoption." This service includes all of the steps related to identifying a child for adoption, telling a prospective adoptive family about the child, and arranging the adoption of the child by that family. Whenever an ASP informs a prospective adoptive family about a particular child and begins to take steps toward placing that child with the family, it is providing the service "identifying a child for adoption and arranging an adoption," and thus is required to comply with the regulations with respect to such adoption.

When an agency gives a "soft referral" for a child who is not eligible for adoption at the time of the soft referral, such a referral would violate the requirement of 22 C.F.R. § 96.35(a) that adoption services be provided ethically and in accordance with the principles of ensuring that intercountry adoptions take place in the best interests of children and of preventing the sale of trafficking of children. An ASP cannot assure a placement is in a child's best interest if authorities in the child's country of origin have not determined eligibility. Similarly, if an ASP gives a referral of an eligible child to prospective adoptive parents who are not yet deemed eligible through a current valid home study, the ASP cannot assure that the potential placement is in the best interest of the child and would thus be out of compliance with 22 C.F.R. § 96.35(a).

The concept of recruiting families for waiting children, a practice used in the United States, China and many other countries often involves photo listing children and, when allowed by the sending country, doing preliminary matches of children with potential families to allow the family a reasonable time to complete their home study and background checks. For those who believe that a child's best interests are served in a qualified, permanent family, this practice has been extremely effective, especially for children with special needs.

In summary, the practice involves publicizing the availability for adoption of children who are eligible under their own countries standards. It seeks to help a family, who may or may not have been considering adoption, consider the adoption of a specific child who would benefit greatly by having a permanent family. Many interested families will not invest the time and resources in pursuing an intercountry adoption unless they believe the child they have learned about, with the permission of the child's (sending) country, is going to be available to them. The sending country, in cooperation with agencies accredited to work with them, will typically place a "hold" on a child who is matched with a family for a reasonable period of time to allow the family to complete a home study and other requirements of the U.S. laws and regulations. As the family is educated about the child's needs, they may withdraw or prepare themselves to accept and deal with whatever needs the child may have.

If the family ultimately completes the requirements and is assessed as a good fit for the child, the authorities in the sending country are provided with the documentation they require and will then make the referral of the child to the family. This system works and does not constitute unethical behavior by the accredited agency. It is an open, transparent system that serves the best interests of waiting children. It is also a system that is approved by the sending country.

This process is also addressed in the Hague Guides to Best Practices. Volume 2 speaks to this in Chapter 11 section 11.2 item 517, and discusses "reversing the flow of files" to help find suitable adoptive parents. Use of the internet for this purpose is also outlined in Section 135. Volume 1, Chapter 7.3 also addresses this and section 7.3.3 item 394 describes the "reversal of the flow of the files" by which receiving States could look for prospective adoptive parents.

Whether you call this a "soft-referral" or "pre-match", it is done in a transparent manner and is in the best interests of children. It is clearly not unethical and not a violation of 22CFR 96.35(a). The statements issued by the Office of Children's Issues, although an incorrect interpretation of the regulations will have a chilling effect on the placement of waiting children, especially special needs children. Is this truly the policy of your office?

This is yet another example of the cavalier interpretation of regulations to fit an anti-adoption agenda of the Office of Children's Issues leadership. The identification of isolated violations of the regulations is hardly an excuse for increasing the budget for monitoring and oversight from $147,000 to $2,500,000. They certainly don't impose the same strict adherence to the regulations on themselves.

Another easy example of the failure of the Office of Children's Issues to observe the regulations they are entrusted with enforcing, is found in the same FAQs issued on February 13th:

> **Q: Under what authority will IAAME collect fees from ASPs without first obtaining a written contract?**
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> IAAME's authority is based on the Federal law and regulations that govern intercountry adoption and through which the Department designated IAAME as an accrediting entity. Since IAAME will be the sole accrediting entity, any ASP that handles intercountry adoption must cooperate with IAAME as the accrediting entity. A specific contract or written agreement with individual ASPs is not required. *IAAME, however, does plan to have a written agreement with ASPs.*

22 CFR 96.8(c) states:

(c) An accrediting entity must make its approved schedule of fees available to the public, including prospective applicants for accreditation or approval, upon request. At the time of application, the accrediting entity must specify the fees to be charged to the applicant in a contract between the parties and must provide notice to the applicant that no portion of the fee will be refunded if the applicant fails to become accredited or approved.

Now, the Office of Children's Issues may argue that this only applies to the application for accreditation and not for monitoring and oversight. If that is the argument that is being made, I find it specious and disingenuous. The only reason IAAME does not have contracts in place is that accrediting, monitoring and oversight activities are new to them. I don't believe it is too much to expect that an entity which is supposed to be qualified would have a contract to provide to agencies it plans to begin accruing fees from on February 15th. The Office of Children's Issues is essentially conducting monitoring and oversight activities through IAAME and is interpreting the regulations to support whatever position they find expedient.

What more will be necessary before you respond to the calls from a broad and expanding majority of the adoption community to change the leadership in the Office of Children's Issues? When we met in September, I understood that it might take time for you to investigate the situation and make the necessary changes. But we are told that you have stated that you are just implementing the Administration's policies.

We would ask that you consider this information and make the necessary changes before the situation deteriorates further. The "soft referral" interpretation could result in thousands of special needs children being relegated to a brief life in an orphanage with no hope of proper care, let alone a loving, permanent family. Please go to https://www.rainbowkids.com/international-adoption and look at the faces of the 4,200 waiting children who could be denied a family with the Office of Children's Issues interpretation of the regulations. I know this is a lengthy letter, but it is important that you know the truth.

Thank you,

Ronald L. Stoddart, President

Save Adoptions

cc: Special Advisor Suzanne Lawrence