

STATEMENT OF SENATOR DON NICKLES INTERCOUNTRY ADOPTION REFORM ACT

Mr. NICKLES: Mr. President, this weekend, as we celebrate National Adoption Day, I rise to introduce S.1934, the Intercountry Adoption Reform Act, along with my colleagues Senators Landrieu, Craig, Bingaman, Inhofe and Gordon Smith. The primary focus of this bill is to streamline, simplify and improve the foreign adoption process for families, adoption agencies and more importantly for the foreign adopted children of American citizens.

In the last decade, there has been a significant growth in intercountry adoption. In 1990, Americans adopted more than 7000 children from abroad. In 2002, Americans adopted almost 20,000 children from abroad. Families are increasingly seeking to create or enlarge their families through intercountry adoptions. There are many children worldwide who are without permanent homes. It is the intent of this bill to make much-needed reforms to the intercountry adoption process used by U.S. citizens and therefore help more homeless children worldwide find a permanent home here in the United States.

There are two main goals of this legislation. First, and more importantly, this bill acknowledges and affirms that foreign adopted children of American citizens are to be treated in all respects the same as children born abroad to an American citizen. Under existing law, foreign adopted children are treated as immigrants to the United States. They have to apply for, and be granted immigrant visas to enter the United States. Once they enter the United States, citizenship is acquired automatically. Had these children been born abroad to American citizens, they would have traveled back to the United States with a U.S. passport and entered as citizens. This bill provides for equal treatment for foreign adopted children.

Furthermore, these children are not immigrating to the United States in the traditional sense of the word. They are not choosing to come to our country, but rather American citizens are choosing to bring them here as part of their families. Once a full and final adoption has occurred, then the adopted child is a full-fledged member of the family and under adoption law is considered as if “natural born.” As a child of an American citizen, the foreign adopted child should be treated as such, not as an immigrant.

The second goal is to consolidate the existing functions of the federal government relating to foreign adoption into one centralized office located within the Department of State. Currently, these functions are performed by offices within the Department of Homeland Security and the Department of State. Consolidation of these functions into one office will result in focused attention on the needs of families seeking to adopt overseas and on the children they are hoping to make part of their families.

Today, when a family seeks to adopt overseas, it has to first be approved to adopt by the Department of Homeland Security. Then, after a child has been chosen, the Department of Homeland Security has to determine if the child is adoptable under federal adoption law. After this determination is made, the Department of State has to determine whether the child qualifies for a visa as an immediate relative of an American citizen. This bill seeks to minimize the paperwork involved and streamline the process by having these functions all performed in one, centralized office, the Office of Intercountry Adoptions, staffed by expert personnel trained in adoption practices.

The focus of this office will be on foreign adoptions and only on foreign adoptions. Officials in the Department of Homeland Security and the Department of State that currently perform the functions being transferred to this new office have many other duties, such as screening for terrorists or dealing with illegal immigrants. Adoption is frequently a low priority on the desk of such officers. By consolidating these functions into one office, with its sole focus being foreign adoption, these issues can be handled more promptly and given the priority they deserve.

Another aspect of the Office of Intercountry Adoptions that I consider extremely important is the proactive role that we intend for it to take in assisting other countries in establishing fraud-free, transparent adoption practices and interceding on behalf of American citizens when foreign adoption issues occur. By establishing an Ambassador at Large for Intercountry Adoption, this legislation will provide a point of contact for foreign governments when issues involving foreign adoptions arise.

In the last few years there have been many examples of instances where our government has had to intercede on behalf of Americans seeking to adopt a foreign child. For example, Romania has been closed to foreign adoption for more than two years now. When Romania issued its moratorium on

foreign adoption, hundreds of American families who were in the process of adopting Romanian orphans were unable to complete their adoptions. Fortunately, the Department of State was able to work successfully with the Romanian government to have these adoptions processed and persuaded Romania to grant exceptions to the moratorium for these American families and their adopted children. Unfortunately, the moratorium is still in place leaving many orphans stuck in orphanages across Romania.

There also have been major adoption issues involving Cambodia, Vietnam, and Guatemala in the last two years. These issues are still being addressed by various officials within the Department of State and the Department of Homeland Security. It will be greatly beneficial to have a point person within the federal government to work on these issues, facilitate resolutions, and intercede on behalf of American families.

There also are some very significant procedural changes in the foreign adoption process included in this bill. Under The Child Citizenship Act of 2000, a foreign child adopted by a U.S. citizen acquires automatic citizenship upon entry into the U.S. to reside permanently. This bill proposes to change the point of acquisition of citizenship from entry into the U.S. to the time when a full and final adoption decree is entered by a foreign government or a court in the United States. Prior to citizenship attaching, the child must be determined to be an “adoptable child” under U.S. law as defined in this bill. This provision is made retroactive to January 1, 1950, the year Americans began to adopt from abroad. This date also addresses the issue of children adopted during this time period whose parents failed to naturalize them under previous law.

Additionally, the Secretary of State shall issue a U.S. passport and a Consular Report of Birth for a child who satisfies the requirements of the Child Citizenship Act as amended by this Act. No visa will be required for such a child; instead it will be admitted to the U.S. upon presentation of a valid U.S. passport. No affidavit of support under 213A of the Immigration and Nationality Act will be required nor will the child be required to undergo a medical exam. These changes are again made to more closely equate the process of bringing a foreign adopted child home to the process of documenting and bringing home a biological child born abroad to a U.S. citizen.

When a U.S. citizen gives birth abroad, the parents simply go to the U.S. Embassy, present the child's birth certificate, their marriage license and proof of U.S. citizenship. Upon receiving this documentation, the embassy provides the parents with a U.S. passport for the child and a Consular Report of Birth that serves as proof of their child's citizenship as well as the child's birth certificate. This process takes little to no time to complete.

The process for foreign adopted children, however, is anything but quick and easy. Currently, an adoptive family may have to travel from the country where it adopts a child to another country in order to get the child's immigrant visa. Only certain embassies are able to grant such visas. On the other hand, most embassies are equipped to provide passports and Consular Reports of Birth. This will eliminate the need and expense associated with families having to travel with their newly adopted children to another U.S. Embassy in a different location prior to bringing the children home.

This bill also provides that the adoptive parents do not have to prove twice that they are financially capable of providing for their child and eliminates the immigration requirement of having the child undergo a medical exam. Before a family is approved to adopt a foreign child, the federal government has to be satisfied that the family is financially able to care for the child. This is part of the approval process. They should not have to repeat this process once they have fully and finally adopted a child.

In addition, prior to a family choosing to adopt a child, they should acquire and be provided as much medical information as is available on the health of the child so that it can make an informed decision on its ability to care for the child. Once that information has been provided and the child has been adopted, the child is now a member of the family. No biological child is denied entry because of medical reasons, nor should an adopted child be denied.

Another section of this bill provides for a new type of visa for children traveling to the U.S. for the purpose of being adopted by an American citizen who has been approved to adopt. Currently children who are not adopted overseas prior to their entry into the U.S. are allowed entry using an immigrant visa. As I have stated earlier, these children are not immigrants. They are being brought to the U.S., at the request of a U.S. citizen, to become a member of that family. This new visa is a non-immigrant visa which authorizes admission of the child for the purposes of adoption. The

authorized admission under this section terminates on the date the adoption is finalized, or two years after the date of admission if the adoption has not been finalized. Until the child is adopted, the child will receive temporary treatment as a legal permanent resident.

This bill also redefines the criteria used to determine a child's eligibility for adoption. This is a critical piece of this legislation. The existing statutory language has not been revised since it was first written over 50 years ago. When it was written it was intended to deal primarily with war orphans and it does not permit voluntary relinquishment of children who have two living parents. The provision in this bill has been written to more fully comport with the language as agreed to in the Intercountry Adoption Act of 2000 which does permit the adoption of children whose parents have irrevocably relinquished them.

The bill also includes many safeguards such as: requirements that the Secretary of State is satisfied that the proper care will be furnished the child; that the purpose of the adoption is to form a bona fide parent-child relationship; that the biological parent-child relationships have been terminated; that the Secretary of State (in consultation with the Secretary of Homeland Security) is satisfied that the child is not a security risk; and that whose adoption and emigration to the U.S. has been approved by the competent authority of the country of the child's place of birth or residence.

Now that I have covered some of the significant aspects of this bill, let me tell you what this bill does not do. It does not create more bureaucracy or additional regulation. It does not increase fees for adoption. It does not slow down the adoption process. It does not add more red tape or additional paperwork. In fact, it does just the opposite.

It consolidates existing federal processes for foreign adoptions into what is intended to be a "one stop shop"– the Office of Intercountry Adoptions. It eliminates paperwork involved in getting an immigrant visa and provides citizenship documentation up front for the child, saving the adoptive family from having to deal with this upon its return home. Instead the fully and finally adopted child enters the U.S. on a U.S. passport as a U.S. citizen and child of a U.S. citizen.

This bill is intended to ease the paperwork burden on adoptive parents who have already gone through extensive paperwork and documentation

production to accomplish their adoption. It is intended to recognize that children adopted by American citizens are the children of American citizens and entitled to all the same rights, duties and responsibilities of biological children of U.S. citizens born abroad.

I introduce this bill with the hope that its passage will significantly improve the foreign adoption process so that more children worldwide can find loving, permanent homes. It is my prayer that someday, adoption will not be needed. That all children will be born into stable, loving homes to parents who want them and are able to care for them. However, until that day comes, the foreign adoption process can be improved and should be improved. Foreign adopted children should be treated as children of U.S. citizens, not as immigrants, and should be accorded all the same rights as biological children of U.S. citizens. To that end, I introduce this bill.

I ask unanimous consent to have the bill printed in the record.