

**From:** [REDACTED]  
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**SUBMISSION NO. 191**

**AUTHORISED:** 22-06-05 *Adoptive*

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6 June, 2005

Mr James Catchpole  
Committee Secretary  
Standing Committee on Family and Human Services  
House of Representatives  
Parliament House  
CANBERRA ACT 2600

Dear Mr Catchpole,

I realise that the official closing date for submissions has closed, though I have been advised through the office of the NSW Department of Community Services that late submissions are being received and that I should send this submission to you.

This submission relates to the attempts by relatives of mine (Joe and Paz Fenwick) to adopt a relative child from the Philippines. I am writing this letter because I have access to the internet, but if the committee needs more information, or wishes to talk with them directly, this could certainly be arranged.

The submission is attached to this e-mail.

Yours sincerely

Ken Fenwick

## Submission on behalf of Joe and Paz Fenwick regarding adoption of relative child from the Philippines

We understand that as a member of The Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption Australia cannot act unilaterally in matter of intercountry adoption. We have also been informed by the NSW Department of Community Services that "in line with the requirements of the United Nations Convention on the Rights of the Child, NSW applies equivalent criteria to the adoption of children living overseas as to the adoption of children from NSW".

However it seems to us that government bureaucracy sometimes gets in the way of the human side of what is, next to the birth of your own children, perhaps the greatest gift that a couple can receive. Let us briefly outline the situation and in so doing, we stress that we have been formally investigating this for the past three years and have meet with obstacles at every turn.

### **Overview of the situation**

On a visit to The Philippines about four years ago, Paz was asked if she would be able to help her sister's family by adopting one of the children (Arvin). After long and detailed discussion we agreed. The fact that we cannot have children of our own was certainly a consideration in the matter, but the request was not instigated by us. Not realising the issues associated with such a request, Arvin moved from the provinces in the Philippines to live with relatives in Manilla and was fully supported during this time by us. We were given custody of Arvin and were formally assigned legal guardianship of him (a document which Australian lawyers regard as legally binding). All attempts to then try and adopt Arvin were unsuccessful. Reluctantly we accepted this situation and following advice from the NSW Department of Community Services are currently trying to bring Arvin to Australia on a temporary student visa.

Then implausible as this may seem Paz's brother was murdered in The Philippines in July 2004. His widow was pregnant and already had three other children under six. The family were virtual refugees in their own country as they were driven off their farm in Samar (without any form of financial compensation) and forced to move to the suburbs of Manilla. Paz spent three months in The Philippines after her brother's death trying to help. While she was there, Paz and one of the children (Divina) developed a bond and Paz was again asked to help the family by adopting Divina. We were wary this time given what had happened with Arvin but we thought the situation might be a little different. Again every request was meet with a firm "No".

### **Detailed information and submission regarding change**

The information here contains extracts from correspondence or personal interviews with various bodies as referenced at the end of each quotation.

#### **1. Clearer advice and better transparency of the process.**

The following is a letter written to our local member (John Bartlett). It details the difficulty in finding accurate information – even just ascertaining who the appropriate body to talk to was.

"We have been investigating this matter for nearly three years now and have continually been frustrated by the lack of clear advice. Our initial enquiries naturally led us to DOCS and an adoption, but we were concerned by the statement:

*Adoptions and Permanent Care Services does not operate a program for the placement of relative children who are currently living overseas. Also: since 1990 all Australian States*

and Territories have referred all intercountry relative adoption enquiries to the Commonwealth Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) for processing Migration Visa Class 104 (Orphan Relative Category). If your relative's situation does not meet the criteria for this visa, another option to consider may be sponsoring the child on a student visa.

Subsequently we contacted our Federal member for help and were advised how to proceed.

Upon reading all the forms we believed that Arvin did not really fit into the relevant categories.

**Child visa**

An applicant for a Child visa must be the natural child, adopted child\* or stepchild\*\* of an Australian citizen, holder of a permanent visa or eligible New Zealand citizen, and must be sponsored by that parent or that parent's current spouse.

\* A child applying **outside Australia** who was adopted **after** his or her parent became an Australian citizen, holder of a permanent visa or eligible New Zealand citizen, **cannot** apply in this category and should consider applying in the **Adopted Child** category (see the Adopted Child section below). A child applying in **Australia** who was adopted in this circumstance, may still be able to apply in this category subject to meeting certain requirements.

**Orphan Relative visa**

An applicant for an Orphan Relative visa must have no parents to care for them because their parents are dead, permanently incapacitated or of unknown whereabouts.

The applicant must have an Australian relative who is their brother, sister, grandparent, aunt, uncle, niece or nephew..

**Adoption visa**

An applicant for an Adoption visa must have been adopted or be in the process of being adopted.

In most cases the adoption must have the prior approval of a State or Territory welfare authority. The only exception is when the adoptive parent has been residing overseas for a period of at least 12 months and that residence overseas was not contrived for the purpose of adopting the child.

The adopted child must be sponsored by the adoptive parent/prospective adoptive parent, who must be an Australian citizen, holder of a permanent visa or eligible New Zealand citizen.

If the child was adopted before the sponsor became an Australian citizen, holder of a permanent visa or eligible New Zealand citizen, the child cannot apply in this category - he or she should consider applying in the Child category.

Australian Immigration Fact Sheet 36

Arvin is not eligible for a child, an orphaned child, or an adopted child visa though consent has been obtained in the Philippines for adoption and if Arvin were adopted in NSW the visa would be granted. Similarly it would appear that if Arvin lived with Paz in the Philippines for 12 months and was formally adopted there, a visa might be granted.

The Department of Immigration also states:

In Australia, inter-country adoption matters are the responsibility of State and Territory welfare authorities. These authorities manage arrangements for adopting children from overseas, including negotiating agreements with other countries and assessing and approving prospective adoptive parents. If you live in Australia and are considering adopting a child from overseas, contact your state or territory welfare authority.

The eligibility requirements for overseas adoptions are different in each State and Territory and may include criteria concerning marital status, age citizenship and health. Welfare authorities will not normally give approval for Australian residents to adopt a child who is a relative, or a child already known to them.

The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) cannot help with adoption arrangements. DIMIA's role is to assess and decide applications for visas in accordance with the requirements of the Migration Regulations.

This fact sheet provides an overview of requirements for entry of children adopted overseas, or to be adopted in Australia by Australian citizens, permanent residents or New Zealand citizens.

Australian Immigration Fact Sheet 33

At this stage we retained the services of a specialist immigration lawyer in Sydney in case we did not understand the situation clearly and there was a way forward.

His advice quite categorically was that this was not an immigration matter, it was an adoption issue and we should contact DOCS.

We again looked at the information of the DOCS website and following their suggestion contacted a support agency for intercountry adoption. This was their reply.

“adoptions can only take place if they are approved by the state welfare department where you reside.

intra family adoptions are not normally supported as the child is not orphaned or abandoned.

I would doubt that you will be able to adopt the child in Australia. What you may be able to do is move to the Philippines - adopt the child under Philippines laws and stay there for more than 12 months and then try and get a visa - this is very complex and not at all recommended”

Ricky Brisson – Australian Families for Children.

## **2. Why are relative adoptions not supported?**

We contacted NSW DOCS about Divina and actually had an interview with the director (Ms Griffin) “Ms Griffin’s response was that if Paz’s sister-in-law could not cope she should put Divina up for adoption and she would be found a good home – somewhere, BUT there was no way that DOCS would sanction an adoption by Paz.

Yet one of the first things Ms Griffin said to me was that it was her Department’s priority to keep families together at all costs. How could putting Divina up for adoption possibly keep the family together? It seemed to me she was suggesting that if this happened she wouldn’t have to worry about it!”

Letter from Joe Fenwick to John Bartlett after the interview with Ms Griffin

This reaction in effect means that we cannot help our own family. If Divina already lived in Australia and the mother was not capable of supporting the entire family, there would be a range of options available to meet the family’s needs and while formal adoption might not be the favoured option it would be a possibility.

Because Divina’s family live in The Philippines and because of the Intercountry adoption arrangements there appears to be no way that Paz can help here family. If the hardships become too great for Divina’s family to bear and Divina is put up for adoption surely it would make sense for her to be adopted by relatives rather than just put on the “open market”. Yet whichever the attitude as expressed by Ms Griffin exists, there is no way for the extended family unit to be maintained.

Finally Ms Brisson’s comments suggest there is a “back door” method of adoption that while not encouraged is possible. Our feeling is that it is pointless living with Divina in The Philippines for a year when the adjustment will eventually have to be made to the Australian lifestyle. Surely the more sensible arrangement would for there to be a twelve month trial in Australia (or less if things were not working out) and if the parties were not able to adjust then the child would be returned to the original country.

## **3. If adoption is the problem, what are the alternatives?**

Finally, while this may not be directly relevant to the terms of reference for this committee, we would ask the committee to consider a form discrimination that exists under the current government policy. We can, perhaps understand why the Intercountry adoption arrangements are so strict; the rights of the child are paramount, but there seems to be no alternative, or compromise arrangement either.

As we pointed out above, if Divina's family lived in Australia, there would be a range of alternatives that would be available. But because Paz is an Australian citizen, she cannot adopt under Phillipino law and because she lives in Australia, we are not allowed to have Divina live with us (under a custody arrangement if not formal adoption) because the Australian government will not grant her a visa.

We are only too aware of the "problems" that boat people and refugees have created for the Australian government, but I am sure you can see why some people hold the view that this bureaucracy lacks compassion and fails to consider individual cases on their merits. Or if it is not the Australian government – rather it is The Hague Convention – then maybe the regulations should be reviewed at that level.

We understand that this submission will not have any impact on the specific cases mentioned above, but we do think that by speaking out now the regulations may be changed in the future and this can only be helpful for others who find themselves in a similar situation.

Yours sincerely

Joe and Paz Fenwick.