

MINUTES FOR MEETING WITH
MS. KATHLEEN THOMPSON
OFFICE OF INTERNATIONAL AFFAIRS
IMMIGRATION AND NATURALIZATION SERVICE
DEPARTMENT OF JUSTICE

Final
4/19/98

AND
MS. PAMELA LEWIS
BUREAU FOR POPULATION, REFUGEES AND MIGRATION
DEPARTMENT OF STATE
AND
FAMILIES OF VIETNAMESE POLITICAL PRISONERS ASSOCIATION
AND
WASHINGTON AREA LEAGUE OF VIETNAMESE ASSOCIATIONS

Tuesday, MARCH 24, 1998, 3:00 PM

On March 24, 1998, a delegation headed by Mrs. Khuc Minh Tho of the Families of Vietnamese Political Prisoners Association (FVPPA), joined by Mr. Le Van Ba of the Washington Area League of Vietnamese Association, Ms Ngoc-Dung Trinh, Mr. Nguyen Hoang Van of FVPPA, met with Ms. Kathleen Thompson, and Tom of INS and Ms. Pamela Lewis of the Department of State.

The following minutes are keyed to the numbered agenda items used during the meeting:

McCain Amendment

(1) Ms. Lewis confirmed that staff of the Department of State have spoken to the office of Senator Jesse Helms, who supports the passage and implementation of legislation that will both **extend** the McCain amendment through April 1999 and **clarify** the language of the amendment to include the unmarried over-21 adult children of widows of former Vietnamese political prisoners who died in camp and adult children of former political prisoners who qualified and were accepted as refugees but who were processed as immigrants at the convenience of the US government. Ms. Lewis advised that the new language should be included in the coming week.

Ms. Lewis stated that the Department and ODP will work with the FVPPA to announce the extension of the amendment here, not in Vietnam, since the government of Vietnam has expressed concern that an announcement in country will confuse people and create false hope among people that they will be eligible to immigrate to the US.

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Ms. Lewis added that the Department is agreeable to using the FVPPA and the volags to disseminate news of the amendment's passage to concerned people in the US and she will work out a FACT sheet following the example of a memorandum written by Mr. Shep Lowman in two languages.

Ms. Thompson stated that INS does not have discretionary authority under the Lautenberg amendment to include the adult unmarried children as a measure to ensure family unity in the protection of refugees that includes consideration of other dependents living in the same household as the principle refugee. The new legislation of the McCain amendment is required

(2) In response to FVPPA concerns about the high no-show rate among the families since the passage of the McCain amendment in 1996, Pam Lewis indicated again that the government of Vietnam has asked ODP not to contact the people directly. Ms. Lewis emphasized the Department of State's interest in bringing ODP to an end and has pressed Vietnam to complete the remaining 506 HO cases and 125 Montagnard reeducation cases, for a total of 631 cases totaling approximately 3,400 people. In addition, there are approximately 2,500 McCain children remaining to be processed once the McCain amendment is extended.

Ms. Lewis also suggested that the FVPPA let her know of any eligible HO cases in Vietnam which cannot receive exit permits from the Vietnamese government. Mrs. Tho agreed to do so.

Evidence and Reconsideration of Denied Cases

(3) Mrs. Tho mentioned concerns about INS officers are stretching for reasons to deny the children of the McCain amendment and a tendency by INS to highlight minor and trivial discrepancies in the applicants' birth certificates. Tho reiterated the FVPPA belief that the provisions of the McCain amendment and the processing of the remainder of the HO subprogram should be implemented in a manner that is fair and consistent both with federal law/regulations and with the intent of the Congress.

Ms. Thompson opined that the program is generous enough. She cited specific areas in documentation pointing to fraud: the appearance of the names of the

father and mother in the Family Register prior to the date on the Marriage Certificate; or the appearance of a date on the Birth Certificate prior to the date of the Marriage Certificate; and, in some cases of the McCain children, the birth certificate of the child indicates that the father and mother lived together in the same Ho Khau before the initial interview, suggesting that the son and daughter had already been married prior to the date the law was enacted.

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In cases of denial where the Birth Certificate and the Ho Khau are in conflict, this is sufficient to adjudicate the case. However, Ms. Thompson added, she will ask the INS officers in the field to be more generous with their time in adjudicating cases. Tom of INS that is difficult to compare the documents submitted earlier to those presented at the interview. Everything must be consistent.

Mr. Van raised the issue of interpreters used during the ODP interviews and said that the lack of accurate interpretation creates misunderstanding, which in turn leads to denial of the case. Van suggested that the interviewing officer should be more patient in order to listen to the applicant's complete explanation. A complete and accurate interpretation during the interview will enable the applicant to explain conflicts and inconsistencies in documents. Ms. Thompson observed that this is a very good point and she will share this with the INS interviewing officers in the field.

Ms. Lewis informed the delegation that ODP now employs directly the Vietnamese interpreters, who in the past were employees of the Vietnamese government. Ms. Lewis also confirmed that applicants can go directly to the ODP office in Vietnam to present papers or to make an appeal. The address of the ODP office in Vietnam has not changed.

(4) Without addressing questions of specific criteria or guidelines for reconsidering denied cases, Ms. Thompson stated that applicants may submit new documents, but the INS officer determines whether the new documentation warrants further review, consideration, or reinterviews.

(5) Concerning the use of DNA to establish conclusively the parentage of the McCain children when all other evidence is found lacking, Ms. Thompson replied that INS

will accept DNA testing, but does not require it. Both Ms. Thompson and Ms. Lewis added that DNA testing must be done by certified organizations. Tho raised the problem that not all states have certified DNA organizations. Ms. Thompson replied that applicants in that situation can call an organization in a nearby state and ask that office to assign a medical facility close to the applicant's residence to the testing, which will then be accepted as certified.

Tom of INS also added that INS considers all possible documents and does not really required DNA.

As to the suggestion by FVPPA that ODP should fund the cost of DNA testing for the former political prisoner, neither the Department of State nor INS can make such payments.

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Priority Two

(6) Ms. Lewis stated that while Priority Two is not closed, this category is not designed to create a new subprogram for individuals who did not meet the HO subprogram requirements of a minimum of three years in reeducation because of their association with the US or US policies in Vietnam in the 60's or 70's. Ms. Lewis stated Priority Two was established to provide people, who after 1975 were persecuted because of their legitimate political, religious, or human rights activities, an opportunity to apply for consideration for admission to the US. Ms. Lewis clarified that the US government did not add post-75 persecution as a way of creating a large, new caseload of individuals, similar to the HO subprogram.

Other Issues

(7) Mrs. Tho expressed the concern of the Association about the new sponsorship requirements from the immigration law passed last year. This change means that families must now show that they must support their family and the new immigrant(s) at an annual income of at least 125% above the federal poverty level. Ms. Thompson replied that this is the law, not an area of discretion for INS. There is no flexibility. In response to Mrs. Tho's question as to whether other children or other friend or

organizations could co-sponsor, Ms. Thompson replied that the law is based on the income of the principal applicant only. Mrs. Tho stated that this means that the prisoners cannot be reunited with the children anymore due to their limited resources.

On the related issue concerning the 20% of former Vietnamese political prisoners processed as immigrants at the convenience of the US government is that their children were issued letters granting them Public Interest Parole (PIP) for an indefinite period of time instead of derivative refugee status, Ms. Thompson noted that PIP ended in 1991. For those individuals denied refugee status at the convenience of the US government, Ms. Thompson suggested that they ask ODP to issue them a letter describing the denial of refugee status so that the affected individuals can take these letter to the local INS office to apply for status adjustment.

(8) Ms. Lewis stated that former Vietnamese political prisoners who fall somewhat short of the three years required for the traditional HO subprogram of ODP are generally not eligible for consideration under the HO subprogram. Ms. Lewis added that all of the older ODP subprograms have eligibility criteria - - such as , 3 years in reed, 5 years USG employment; however, someone who had less than the required 3 years, but can establish that they were subjected to other instances of persecution because of post-1975 activities, may be eligible for consideration for admission to the US. Within this category, Ms. Lewis continued, there is no specific criteria - - like 3 years in reeducation - - which will make someone eligible for an INS interview. Each case is different and considered separately on a case-by-case basis.

Ms. Lewis added that the HO program will be completed by April 1999 and there will be sufficient refugee admission numbers to complete the caseload.

Ms. Lewis also informed the meeting that the ROVR program is going very well. Over 5,000 have been interviewed and over 1,000 are already in the pipeline.

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Meeting at INS, March 24, 1998

Pam. Lewis (PL) DOS staff talked to Senator Jesse Helms. He supports the extension of McCain. Wait to the end of this week to move the new language in. The new language is to extend the Amendment until April 1999. Will work with FVPPA to make the announcement here, not in Vietnam, since VN said that it may confuse people. Use FVPPA and the Volags as a source to notify concerned people in the US. Will work out a FACT Sheet, may use Shep's draft and put in two languages.

Kathleen Thompson (CT) Cannot use the Lautenberg for this group of 21 and/or over. The old McCain has expired; therefore, need the new passage extension due to statutory requirements.

PL. VN has asked ODP not to contact the people directly. DOS wants to bring a closure to this program, has pressed VN to complete the remaining 506 HO cases. All together there are 631 cases of approximately 3,400 people in HO program, including the McCain children and 900 HO Montagnards. DOS will issue passports after the cases have been approved.

Tho. Will need a Fact Sheet of ROVR and HO to put on the newspapers. Expressed concerns about the INS interviewers inconsistently asking for documents, and lacking patience when interviewees were not ready with answers.

CT. The program is generous enough. However, it shows that there is a possibility of fraud, e.g. when the father/mother's names appeared in the Family Register book prior to the date of the marriage certificate, or the baby's birth certificate dated before the marriage date. If that is the only thing the INS officer asked for, it is legitimate.

Tho. Wished that the denials be given an explanation as to the reasons that the case was turned down, and/or what documents are needed, or from what authorities.

CT. No further documentation is necessary if the birth certificate and the Ho khau are in conflict, that proves adequate info for the officer to adjudicate the case. Anyway, will remind field officers to be generous with their time.

Tom. It is difficult to compare the document submitted earlier to those presented at the interview. Everything must be consistent.

KT. In some situation, the child's birth certificate proves that the father and mother lived together in the same HoKhau before the initial interview. Therefore, this seems to prove that the son/daughter had already been married prior to the date the law enacted.

Tho. Can additional documents be submitted and considered?

CT. People can submit additional information, but it may depend on whether the new information warrants any consideration.

Page 2.

PL. Regarding the 3 year requirement: If the person cannot prove he served 3 years, even one day less won't count. So the "Not Qualified" is marked.

Tho. People seemed to say that it has been a long time since they were released, and under circumstances, they cannot retrieve the documents. Therefore, some used statements from their camp detainee friends – people who had lived in the same camp, at the same time, but ODP did not accept it.

CT. There is so much documentation available out there that it is surprising that people cannot get it. Sometimes, document is there, but not authentic, or reissued by the MOI, so it is not accepted by the officer, and nobody can question that.

Tho. Pam, when you are the liaison, do you meet regularly with VN authorities?

Pam. Liaison between ODP and ODP personnel. Now these become US government employees. So believe that they are not under the VN pressure.

CT. Will send a reminder to the field officers regarding those situations that bear document conflict, and ask them to be more patient, giving more time for questions and answers.

Van. Problems with interpreters.

PL. Confident that the interpreters know that they are now working for the US government, and DOS can hire and can fire.

Tho. Can people bring their own interpreters.

CT +PL. No, cannot use people off the street.

Tho. DNA fee waiver.

CT. INS accepts it, but not really requires it.

Tom. INS considers all possible document but not really requires DNA.

CT/PL. DNA must be done by certified organizations, and they do have a whole system to do this. Mostly, do for military to prove their relationship.

Tho. Taking a man in Missouri for example, who was told to go to other state. The answer is that he does not have to go there, just calls and talks to the people. They can make arrangement for him to get it done in his state. DOS/INS cannot pay for the test.

Page3.

Priority II. PL. These are long-closed files due to ineligible, and cannot pick up not-qualified HO cases. Although some did participate in anti-revolutionary action, cannot accept that.

PL. Wants very much to bring this program to closure. Wants to finish the HO 21/over children, not to open a new program. Will try to get it done in 1999, bring them to the US and close the program down.

Affidavit of Support. CT. This is the law, not INS. It requires immigrants to do so. There is no leeway.

PIP? PIP program stopped a long time ago, since 1991? PIP people can ask ODP to issue them a letter in which ODP denied them refugee status, and they can bring this to local INS to apply for status adjustment.

No show issues: PL. Only 4 people showed up in February this year. DOS already gave a list to VN of those who are qualified, but have not got exit permits by the Vietnamese. Vanik may help entice the VN to cooperate more readily. The ROVR program goes very well. Over 5,000 have been interviewed and over a thousand ready in the pipeline.

Vai

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McCain Amendment

(1) Passage and implementation of legislation that will both extend the McCain amendment through September 1998 (and beyond, if necessary) and clarify the language of the amendment to include the unmarried over-21 adult children of widows of former Vietnamese political prisoners who died in camp and adult children of former political prisoners who qualified and were accepted as refugees but who were processed as immigrants at the convenience of the US government. Due to the press of last minute business, this extension of the McCain amendment disappeared from the State-Commerce-Justice spending bill last November. This meeting will help consolidate our effort to pass this legislation as soon as possible. What is the status of the McCain amendment for this session of Congress? We understand that renewed legislation will be required to provide legal authority to process McCain children whose parents have already precede them to the US.

As an alternative, in lieu of legislation, why can't the Department of State and INS simply make an administrative change to include the McCain children, which was the policy of ODP until the Bureau initiated the policy change excluding the over-21 adult children of the Vietnamese political prisoners. On February 5, 1998, we met with Mr. Alan C. Krezcko, Deputy Assistant Secretary of State for the Bureau of Population, Refugees and Migration (PRM) at the Department of State, along with Ms. Terry Rusch and Ms. Pamela Lewis. We are pleased to report that Mr. Krezcko pledged to support efforts to pass the extension of the McCain amendment this year. Doesn't the INS, under the discretionary authority of the Attorney General, have the authority to include the adult unmarried children as a measure to ensure family unity in the protection of refugees that includes consideration of other dependents living in the same household as the principle refugee? Now that the Department of State supports this policy, please consider changing the policy so we all can avoid the time-consuming alternative of legislation for this group of cases. We ask that ODP now invite the whole family to the interview, including adult children covered by the McCain amendment.

Finally, we are still concerned about commitment to processing the McCain children by ODP in the field. We hear that INS officers in the field are telling applicants that the McCain amendment is finished. We find this highly disturbing and we want to know what INS will do to ensure the caseload remains active until completed.

(2) We remain concerned about the high no-show rate among the families since the passage of the McCain amendment in 1996. We understand that this no-show rate is 70% and we believe that the unmarried adult children are not being notified about their restored eligibility under the amendment. We would like to offer our assistance to the Orderly Departure Program (ODP) to publicize the amendment among the Vietnamese communities abroad and back in Vietnam.

Evidence and Reconsideration of Denied Cases

(3) We have doubts about many cases of the McCain children and other cases under the HO subprogram of ODP who are being denied for the reasons "that they failed to establish their single status at the time of their father's interview." Our Association has received correspondence from many cases of this type and it is apparent that INS officers are stretching for reasons to deny the children of the McCain amendment. We have noticed a tendency in these denied cases to impose on some applicants a burden of proof so show that they were single at the time of their father's interview and also an inclination by INS to highlight minor and trivial discrepancies in the applicants' birth certificates. We believe that the provisions of the McCain amendment and the processing of the remainder of the HO subprogram should be implemented in a manner that is fair and consistent both with federal law/regulations and with the intent of the Congress. During our meeting with you on November 1, 1996, you suggested that applicants under the McCain amendment bring as much documentation as possible about their relationship to the principal. In the same meeting, you also stated that you would remind INS officers in the field to provide detailed written explanations for denials.

We do not think that these guidelines are being followed in many cases. The attached enclosures from the Vietnamese Family Relationships book of ODP presents a protocol for reviewing documentation in cases and acknowledges the validity of secondary evidence when primary documentation was lost due to night attack, to the panic in 1975, or due to confiscation by security cadre of the SRV after the fall of the Republic of Vietnam. INS interviewing officers need to follow the guidelines of the book and they should state clearly to applicants why they have been denied and what secondary documents and evidence must be submitted to overcome the doubt or denial. **Please tell the applicants what documents they must submit, where in**

Vietnam they should get the documents so that their cases can be seriously reconsidered when applicants submit the new documents.

(4) What are the criteria and procedures employed by INS to explain a denial and to afford an avenue of appeal for reconsideration? We understand that in most of the denied cases the applicants are perfunctorily pushed out the door by INS interpreters who, occasionally, tell the applicants they can appeal in writing to INS in Bangkok. Denied applicants are rarely given an opportunity to rebut, explain or present additional evidence. Applicants rarely understand the reasons for their denials and, when they submit additional documentation from existing competent authorities of Vietnam, they get a form letter from INS saying that the evidence is insufficient to warrant review, or not credible. What are the standards of proof for the applicants? Who in INS reviews the denial decisions? What are the guidelines? INS guidelines instruct overseas posts to apply generous review for requests for reconsideration since administrative or judicial appeal is not available to applicants in overseas refugee processing, but INS officers do not follow this guideline.

(5) What about the use of DNA to establish conclusively the parentage of the McCain children when all other evidence is found lacking? Why can't this procedure be used more readily? And more often? **Most of the HO cases which have undergone DNA testing to date have in fact validated the relationship as claimed. Yet some of these applicants have been denied even after DNA tests strongly support the family's claim. What probability of parentage is considered acceptable proof? Have the INS officers in the field received guidance on how to interpret DNA test results?**

We also believe that ODP should fund the cost of DNA testing for the former political prisoner, which are refugee cases. The cost of the DNA testing can be prohibitive for these applicants, who often have no sponsor in the US.

Priority Two

(6) What about the status of Priority Two processing for the hundreds of political prisoners who do not fit the traditional HO eligibility guidelines but who suffered persecution because of post-1975 political, religious or human rights activities? We understand that there are 506 of these cases which ODP has presented to the Vietnamese government in the hope that the Vietnamese government will issue exit permits for these cases. In all, we understand that ODP has over 1,000 cases involving applicants jailed for alleged counter-revolutionary acts, attempts to overthrow the government or other acts committed post-75, and thus deemed not qualifying by ODP.

Other Issues

(7) Our Association is also worried about the new sponsorship requirements from the immigration law passed last year. Families must now show that they can support their family and the new immigrant(s) at an annual income of at least 125% above the federal poverty level. This new sponsorship requirements take effect December 19 of this year. We share the opinion of Jayne Park, staff attorney at the National Asian Pacific American Legal Consortium, who wrote as follows: "These new rules impose an unfair and discriminatory standard which will make it difficult, if not impossible for low-income immigrants from Asia to reunite with their loved ones. These rules are a betrayal to this country's commitment to reunifying and preserving families." (Attachment #) What can we do to mitigate the effects of these requirements on the processing of the former Vietnamese political prisoners and their families? This situation is particularly difficult given the new INS policy that often requires the Principal Applicant to leave by himself and then apply for his children after his arrival here, which makes it extremely unlikely that the newly resettled PA can meet the income requirements for sponsorship of his dependents.

A related issue concerning the 20% of former Vietnamese political prisoners processed as immigrants at the convenience of the US government is that their children were issued letters granting them Public Interest Parole (PIP) for an indefinite period of time instead of derivative refugee status. This administrative procedure for the convenience of the US government has disadvantaged these children, who are now unable to adjust their status and often encounter employment problems (see attached documentation and related case).

(8) Also, what about the cases of former Vietnamese political prisoners who fall somewhat short of the three years required for the traditional HO subprogram of ODP but who present compelling humanitarian reasons for resettlement as political refugees in the United States? What can we do to accommodate these cases?

(9) What about the availability of refugee admission numbers for FY98 and FY99 to ensure that completion of all the cases of the former Vietnamese political prisoners and their families, including the McCain children?

(10) We heard that recently many applicants were not permitted to attend interviews in February due to procedural changes by the Vietnamese authorities in authorizing interviews. Can you tell us what is happening, and why? When are the interviews expected to resume? Will the inability to process applicants affect refugee admission numbers for Vietnam?

NOTES FOR TALKING

(Meeting with Kathleen Thompson and Pam Lewis, March 24, 1998)

Welcome and Introduction:

- (1) Introduce members of your delegation.**

McCain Amendment

PARAGRAPH (1):

(a) One concern now is to secure extension of the McCain amendment. What is the status of the legislation to extend and modify the amendment? Pam, you are the Bureau's Congressional Liaison, where is the amendment??!

(b) Now that Mr. Krezcko pledged the support of the State Department to pass the amendment, why can't ODP simply make an administrative policy change to include the McCain children, thus eliminating the need for legislation? Does INS have the discretionary authority to include the McCain children in the family units? We recall from our meeting with you and Whitney Reitz on November 1, 1996 that you said ODP has 2,900 cases under the McCain amendment ready for interview with sufficient time to complete. Now we do not have enough time and ODP has excluded over-21 children from the processing of these cases. After all, ODP simply made a policy decision to exclude the McCain children to begin with, thus creating the need for legislation to reverse this unfortunate decision.

(c) We ask that ODP invite the entire family unit to be interviewed.

(d) What are the guidelines and procedures for reviewing appealed cases? What instructions does INS give to ODP interviewing for reconsideration of denied cases?

PARAGRAPH (5):

(a) What about the use of DNA testing to establish parentage when all other evidence is found insufficient? Some applicants have been denied even after DNA testing supported their claim. Has INS sent guidance to officers in the field on how to interpret DNA test results?

b) Can INS use DNA testing more often and sooner in the processing of the case?

(c) Who can help pay for DNA testing if the family is unable to pay?

(d) What about the final disposition of denied cases when the McCain amendment expires? Will all denied cases be given another interview even if the amendment expires or not renewed if applicants submit additional evidence of have DNA testing?

PRIORITY TWO

Paragraph (6)

What about the Priority Two cases for about a thousand cases who do not fit the traditional HO processing guidelines because they are not considered not qualified due to counter-revolutionary activities after 1975?

(d) We believe that it is in the interest of the US Government to complete the McCain caseload so that the Vietnamese government will see a consistent approach and do likewise with the ROVR.

PARAGRAPH (2):

(a) Why the high no-show rate among the McCain caseload?

(b) We think there is a need for a public information campaign and we can help with that.

Evidence and Reconsideration of Denied Cases

PARAGRAPH (3):

(a) Unreasonable standards and trivial reasons for denials.

(b) We ask that INS give consideration and weight to other documents and information. (In a previous meeting (November 1, 1996) with Kathleen Thompson and Whitney Reitz, we understood that there was agreement on this issue.)

(c) What about the standards for documentation as discussed and outlined in the book Vietnamese Family Relationships? (Present copied pages and the book). Why don't OPD interviewing officers follow the guidelines of this book?

PARAGRAPH (4):

(a) How does INS review new documents issued after 1975?

(b) How does INS explain the reasons for denial to the applicants

(c) What new documents must be submitted?

Other Issues

PARAGRAPH (7)

(a) The new sponsorship requirements are not fair for those former Vietnamese political prisoners came to the U.S. as immigrants (although qualified as refugees) at the convenience of the US government.

(b) In general, we think there should be a waiver for these requirements for individual cases based on compelling humanitarian arguments for family reunification.

(c) Finally, processing of some refugees as immigrants has grievously disadvantaged some of their children, who instead of derivative refugee status received indefinite public interest parole (PIP), which has precluded their legal adjustment and created employment problems (see attached documentation and related case).

PARAGRAPH (8):

(a) What about the cases of the former Vietnamese political prisoners who fall short of the three years required for traditional HO subprogram guidelines?

PARAGRAPH (9):

(a) What about the availability of FY98 and FY99 admission numbers to accommodate the remaining HO caseload and the delayed processing of the McCain children?

PARAGRAPH (10):

(a) What about reports that many applicants were not permitted to interview due to procedural changes by the Vietnamese government? Will this affect admission numbers for Vietnam?

PARAGRAPH (11) (IF YOU HAVE TIME):

(a) My trip to Vietnam after 25 years of exile.

(b) My meeting (at their invitation) with officials from the consular affairs of the MOI. How can we help to implement this agreement in the field.?

(c) Text: Finally, I want to tell you about an interesting meeting I had during my return to Vietnam after 25 years of exile. I had the opportunity to talk, at their invitation, with officials from the Ministry of Interior (MOI). I met with Mr. Thanh Tam, Mr. Tu and Nguyen Ha of the consular affairs section (Cục Quản Lý Xuất Nhập Cảnh) in the MOI. We shared views on the processing the of the former Vietnamese political prisoners. These officials appeared to understand the goal of our Association that the MOI issue exit permits as soon as the applicant presents proof of approval from the US government and they indicated that the MOI Thompson Agenda

Concluding Remarks at the end of the meeting: We thank you very much for taking the time to meet with us.

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(2) We remain concerned about the high no-show rate among the families since the passage of the McCain amendment in 1996. We understand that this no-show rate is 70% and we believe that the unmarried adult children are not being notified about their restored eligibility under the amendment. We would like to offer our assistance to the Orderly Departure Program (ODP) to publicize the amendment among the Vietnamese communities abroad and back in Vietnam.

(3) We have doubts about many cases of the McCain children and other cases under the HO subprogram of ODP who are being denied for the reasons "that they failed to establish their single status at the time of their father's interview." Our Association has received correspondence from many cases of this type and it is apparent that ODP is stretching for reasons to deny the children of the McCain amendment. We have noticed a tendency in these denied cases to impose on some applicants a burden of proof so show that they were single at the time of

their father's interview and also an inclination by ODP to highlight minor and trivial discrepancies in the applicants' birth certificates. We believe that the provisions of the McCain amendment and the processing of the remainder of the HO subprogram should be implemented in a manner that is fair and consistent both with federal law/regulations and with the intent of the Congress. During our meeting with you on November 1, 1996, you suggested that applicants under the McCain amendment bring as much documentation as possible about their relationship to the principal. In the same meeting, you also stated that you would remind INS officers in the field to provide detailed written explanations for denials. We do not think that this guideline is being followed in most cases.

(4) What are the criteria and procedures employed by ODP to explain a denial and to afford an avenue of appeal for reconsideration? We understand that in most of the denied cases the applicants are perfunctorily pushed out the door by ODP interpreters who, occasionally, tell the applicants they can appeal in writing to ODP in Bangkok. Denied applicants are rarely given an opportunity to rebut, explain or present additional evidence. Applicants rarely understand the reasons for their denials and, when they submit additional documentation from existing competent authorities of Vietnam, they get a form letter from ODP saying that the evidence is insufficient to warrant review, or not credible. What are the standards of proof for the applicants? Who in ODP reviews the denial decisions? What are the guidelines? INS guidelines instruct overseas posts to apply generous review for requests for reconsideration since administrative or judicial appeal is not available to applicants in overseas refugee processing, but ODP does not follow this guideline.

(5) Apart from such substantive issues of refugee processing as applied to the McCain children and ODP applicants, we have also found a recurrent general lack of attentiveness by some interviewing officers of ODP. One egregious example of this is the case of Dong The Dai (see copy of correspondence with ODP), a long-suffering political prisoners whose son who was precluded from departing Vietnam with his family because the ODP interviewing officer did not see the original birth certificate in the file at the interview, an original birth certificate which the family found in the IOM bag along with the rest of their documents when they left Vietnam. It is elementary and crucial that ODP officers carefully review and inventory original documentation for interviews to avoid the unnecessary and tragic result that now bedevils the family of Dong The Dai. And, as is inevitable, when such a mistake is made, it should be acknowledged and corrected. In this particular case we are outrage by the fact that Mr. Pendergrass, who originally initiated the policy to exclude the adult unmarried children from eligibility, who opposed the passage of the McCain amendment that restored this eligibility, now shamelessly and speciously invokes the provisions of the amendment to deny a case that has nothing to do with the amendment. This case remains unresolved.

(6) What about the use of DNA to establish conclusively the parentage of the McCain children when all other evidence is found lacking? Why can't this procedure be used more readily

and more often? Most of the HO cases which have undergone DNA testing to date have in fact validated the relationship as claimed. We also believe that ODP should fund the cost of DNA testing for the former political prisoner, which are refugee cases. The cost of the DNA testing is often prohibitive for these applicants, who generally have no sponsor in the US.

(7) Our Association is also worried about the new sponsorship requirements from the immigration law passed last year. Families must now show that they can support their family and the new immigrant(s) at an annual income of at least 125% above the federal poverty level. This new sponsorship requirements take effect December 19 of this year. We share the opinion of Jayne Park, staff attorney at the National Asian Pacific American Legal Consortium, who wrote as follows: "These new rules impose an unfair and discriminatory standard which will make it difficult, if not impossible for low-income immigrants from Asia to reunite with their loved ones. These rules are a betrayal to this country's commitment to reunifying and preserving families." What can we do to mitigate the effects of these requirements on the processing of the former Vietnamese political prisoners and their families?

(8) What about the status of Priority Two processing for the hundreds of political prisoners who do not fit the traditional HO eligibility guidelines but who suffered, on a case by case basis, persecution because of post-1975 political, religious or human rights activities? ODP is ignoring these cases.

(9) What about the availability of refugee admission numbers to ensure that completion of all the cases of the former Vietnamese political prisoners and their families, including the McCain children?

(10) Finally, I want to tell you about an interesting meeting I had during my return to Vietnam after 25 years of exile. I had the opportunity to talk, at their invitation, with officials from the Ministry of Interior (MOI). I met with Mr. Thanh Tam, Mr. Tu and Nguyen Ha of the consular affairs section (Cục Quản Lý Xuất Nhập Cảnh) in the MOI. We shared views on the processing of the former Vietnamese political prisoners. These officials appeared to understand the goal of our Association that the MOI issue exit permits as soon as the applicant presents proof of approval from the US government and they indicated that the MOI will do this. On behalf of our Association, I thanked these officials for their offer of cooperation for the timely issuance of exit permits. Our Association is pleased to report this understanding about the processing because the issuance of the exit permits will expedite and simplify the departure of the applicants and their families from Vietnam. Our Association will monitor the implementation of this expedited issuance of exit permits by the MOI and by the Vietnamese Embassy here in Washington.

Transmit Confirmation Report

No. : 001
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Transmitter : 703 698 5502
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Hiệp,
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**AGENDA FOR MEETING WITH
MS. KATHLEEN THOMPSON
OFFICE OF INTERNATIONAL AFFAIRS
IMMIGRATION AND NATURALIZATION SERVICE
DEPARTMENT OF JUSTICE
AND
MS. PAMELA LEWIS
BUREAU FOR POPULATION, REFUGEES AND MIGRATION
DEPARTMENT OF STATE
AND
FAMILIES OF VIETNAMESE POLITICAL PRISONERS ASSOCIATION**

(9 pages)

Tuesday March 24, 1998 @ 3PM

~~FEBRUARY, 1998, 4:00 PM~~

(1) Passage and implementation of legislation that will both extend the McCain amendment through September 1998 and clarify the language of the amendment to include the unmarried over-21 adult children of widows of former Vietnamese political prisoners who died in camp and adult children of former political prisoners who qualified and were accepted as refugees but who were processed as immigrants at the convenience of the US government. Due to the press of last minute business, this extension of the McCain amendment disappeared from the State-Commerce-Justice spending bill last November. On February 5, 1998, we met with Mr. Alan C. Krezcko, Deputy Assistant Secretary of State for the Bureau of Population, Refugees and Migration (PRM) at the Department of State, along with Ms. Terry Rusch and Ms. Pamela Lewis. We are pleased to report that Mr. Krezcko pledged to support effort to pass the extension of the McCain amendment this year. This meeting will help consolidate our effort to pass this legislation as soon as possible.

(2) We remain concerned about the high no-show rate among the families since the passage of the McCain amendment in 1996. We understand that this no-show rate is 70% and we believe that the unmarried adult children are not being notified about their restored eligibility under the amendment. We would like to offer our assistance to the Orderly Departure Program (ODP) to publicize the amendment among the Vietnamese communities abroad and back in Vietnam.

(3) We have doubts about many cases of the McCain children and other cases under the HO subprogram of ODP who are being denied for the reasons "that they failed to establish their single status sat the time of their father's interview." Our Association has received correspondence from many cases of this type and it is apparent that ODP is stretching for reasons to deny the children of the McCain amendment. We have noticed a tendency in these denied cases to impose on some applicants a burden of proof so show that they were single at the time of

their father's interview and also an inclination by ODP to highlight minor and trivial discrepancies in the applicants' birth certificates. We believe that the provisions of the McCain amendment and the processing of the remainder of the HO subprogram should be implemented in a manner that is fair and consistent both with federal law/regulations and with the intent of the Congress. During our meeting with you on November 1, 1996, you suggested that applicants under the McCain amendment bring as much documentation as possible about their relationship to the principal. In the same meeting, you also stated that you would remind INS officers in the field to provide detailed written explanations for denials. We do not think that this guideline is being followed in most cases.

(4) What are the criteria and procedures employed by ODP to explain a denial and to afford an avenue of appeal for reconsideration? We understand that in most of the denied cases the applicants are perfunctorily pushed out the door by ODP interpreters who, occasionally, tell the applicants they can appeal in writing to ODP in Bangkok. Denied applicants are rarely given an opportunity to rebut, explain or present additional evidence. Applicants rarely understand the reasons for their denials and, when they submit additional documentation from existing competent authorities of Vietnam, they get a form letter from ODP saying that the evidence is insufficient to warrant review, or not credible. What are the standards of proof for the applicants? Who in ODP reviews the denial decisions? What are the guidelines? INS guidelines instruct overseas posts to apply generous review for requests for reconsideration since administrative or judicial appeal is not available to applicants in overseas refugee processing, but ODP does not follow this guideline.

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K. Thompson Agenda

February , 1998

Page 3

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