

of Educational and Cultural Exchange Visas," the GAO determined that certain Exchange Visitor Program activities appeared to be inconsistent with the statutory grant of authority and its underlying legislative intent. GAO summarized its findings, stating:

"Most J visa activities appear to conform to the intent of the 1961 act. However, GAO believes that certain activities and programs in the trainee and international visitor categories, including the summer student/travel work, international camp counselor, and au pair (Child care) programs, are inconsistent with the legislative intent. GAO identified instances of participants working as waiters, cooks, child care providers, amusement and leisure park workers, and summer camp counselors. Authorizing J visas for participants and activities that are not clearly for educational and cultural purposes as specified in the act dilute the integrity of the J visa and obscures the distinction between the J visa and other visas granted for work purposes."

The concerns raised in the GAO report had troubled USIA for several years, especially the au pair program. Objections to the operation of au pair programs under the Exchange Visitor Program and the use of the J visa were also raised by the Department of Labor, the Immigration and Naturalization Service, and, most importantly, USIA's congressional committees of jurisdiction.

In June of 1993, USIA was approached by the au pair sponsors conducting these programs to examine whether the Agency's past objections to the continuation of these programs under the Exchange Visitor Program could be resolved. The au pair sponsors were advised that the Agency saw merit in the programs but had concluded that it lacked statutory authority to conduct the programs as then configured. The Agency's principal objection to the program was its lack of a bona fide educational component sufficient to meet the statutory requirements of the Fulbright-Hays Act. A secondary, but equally compelling, objection was the program's failure to comply with the Fair Labor Standards Act and its requirements governing the payment of minimum wage.

The Agency and the au pair sponsors began earnest discussions involving how best to regularize the au pair program in order for it to find a permanent home at USIA. During the course of these discussions, several tragic incidents involving au pair placements occurred and were widely reported in the press. Specifically, the deaths of two infants while in the care of au pairs and allegations of child molestation and child pornography allegedly involving au pairs brought

about Congressional and public scrutiny of these programs. This scrutiny, in turn, resulted in Congressional action which authorized and directed the Agency to promulgate regulations governing au pair placements.

Pursuant to this clear directive, the Agency published, on December 14, 1994, interim final regulations governing the au pair program that were both consistent with the provisions of the Fulbright-Hays Act and which also provided safeguards for au pair participants and the American host families with whom they are placed. Given the wide popularity of these programs—and the criticisms of them—the Agency met with, solicited, and incorporated the views of the au pair organizations, interested members of the public and the views of those congressional offices possessing jurisdiction over educational and cultural exchange programs.

The Agency's **Federal Register** publication of this interim rule with request for public comment generated over 3,000 responses from American families during the thirty day public comment period. A considerable number of the comments received had a remarkably familiar style and theme, and focused primarily or exclusively on two issues: the rise in weekly wage or stipend paid to au pairs and the requirement that au pairs taking care of children under the age of two be at least 21 years of age. Additionally, however, the Agency received a significant number of personalized and thoughtful comments and responses, many which were highly persuasive. A majority of the commentators, including a large number who objected to certain aspects of the interim final rules, praised the Agency for efforts to improve screening, training, and/or other aspects of the au pair program. The letters also highlighted that, despite the problems which have been associated with this program, many families develop excellent relations with their au pairs and make considerable efforts to advance the cultural and educational exchange aspects of the program.

Many letters lamented that other forms of child care were unaffordable. Some complained about the quality alternative child care. While the USIA is pleased that the au pair program apparently provides considerable direct benefit to many American families on the important matter of affordable child care, the Agency cannot lose sight of the fact that it has legal authority to operate the au pair program only if it is primarily a cultural and educational exchange program which incidentally provides child care. If the program

becomes primarily a child care program, no matter how valuable, it can be legally maintained as a federal program only if it is transferred to another agency.

Although a distinct small minority, some letters criticized the Agency for virtually any effort to regulate the program as undue interference into family activities. While the Agency has made every effort to ensure that the regulations are as unburdensome as possible, it is important to note that certain regulations are necessary before the Agency is legally permitted to operate this program. Additionally, none of the regulations will affect individuals involuntarily. The regulations apply only to families who voluntarily and deliberately choose to participate in the au pair program.

In light of the comments it has received, the Agency has determined that the interim regulations published December 14, 1994 should be amended as follows.

Educational Component

As discussed above, the Agency's statutory authority to facilitate au pair activities has been the subject of debate for the past eight years. To achieve compliance with applicable federal law, taking into account the 1990 GAO opinion, the interim regulations required that au pair participants pursue six semester hours (or its equivalent) of academic course work at an accredited post-secondary institution. The Agency concluded that this requirement is the minimum programmatic component necessary to comply with the provisions of the Fulbright-Hays Act. Without this requirement the Agency had determined that it would not have statutory authority to conduct this activity.

Some responses criticized the Agency for focusing excessively on traditional forms of educational activities to meet the educational exchange requirement. These critics claimed the Agency failed to appreciate the degree and caliber of cultural exchange that results from daily contact between host families and au pairs. Contrary to these assertions, the Agency believes it fully appreciates the value of the experiences identified by these commentators. The Agency recognizes that the family context provides a unique opportunity for the host family and au pair to learn about each other's cultures and values. Additionally, one of the clear benefits of the au pair program is that it provides many young foreign nationals who otherwise would not have the opportunity to participate in an exchange program a chance to do so.

This recognition does not alleviate the Agency's responsibility to conduct the