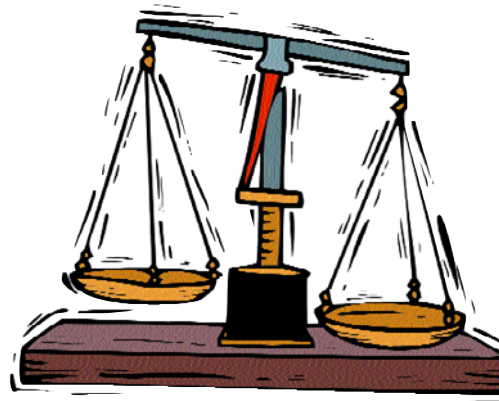


When You Adopt Under the Laws of Another Country: U.S. Readoption Explained



Q My husband and I just completed an international adoption. Is it necessary for us to readopt our child in the United States?

A Most adoption professionals recommend that adoptive parents readopt their child if their state permits them to do so. Readoption is the legal process of adopting a child again in the United States, after the child has been lawfully adopted in another country. In a readoption, the adoptive parents, once back in the U.S., petition the appropriate court in their state of residence to adopt their child under the laws of their state.

Two fundamental pre-requisites exist for the completion of an adoption abroad. First, the child must be lawfully adopted under the laws of the foreign country where the adoption was pursued. Second, the adoptive parents must satisfy U.S. immigration requirements so that the child may lawfully enter the United States. The U.S. Immigration and Naturalization Service (INS), a Federal agency, will recognize a valid foreign adoption, but only for the purpose of authorizing the immigration of the child into the U.S.

Adoption in the U.S., for the most part, is a matter of state law. The Federal recognition afforded by the INS is not

equivalent to recognition of the adoption under the laws of the state where the adoptive parents reside. Such state recognition occurs when (a) the state has a law that provides for the automatic recognition of the foreign adoption decree, or (b) the state allows the adoptive parents to readopt their child in its courts.

States Vary

A first step for parents is to carefully review the laws of their state to determine the recognition afforded their foreign adoption decree. (See the National Adoption Information Clearinghouse Web site www.calib.com/naic for a summary of state adoption law). Parents may wish to consult with an experienced adoption attorney in their state. (See the Web site of the American Academy of Adoption Attorneys, www.adoptionattorneys.org, for a state by state listing of its member attorneys). Approximately 25 states grant full recognition to a foreign adoption decree; many of these states permit readoption if the parents wish to do so. The remaining states are divided between those that have specific laws permitting readoption and those that are silent on the matter. Many of the states that do not specifically recognize the procedure of readoption permit the filing of such petitions. States that permit readoption often require that the original foreign adoption decree be filed with the adoption petition. In such cases, after the completion of the pro-

ceeding, the court will usually allow the return of the original foreign documents to the parents. The average cost of readoption is significantly less than the cost of a domestic adoption.

Why Readopt?

First and foremost, readoption prudently secures the recognition of a legal parent/child relationship under U.S. law, thus eliminating reliance on the ongoing validity of the adoption laws of the foreign country. Whether a state recognizes a foreign adoption decree or not, readoption is a practical means of documenting the parent/child relationship under U.S. law. A recent state law case brought the significance of this security into sharp focus. In that case, a biologic sibling attempted to block his adopted sibling's ability to inherit from their parents on grounds that his brother had been adopted in another country but never adopted in the U.S. pursuant to U.S. law.

Readopting a child in the United States has benefits beyond assuring inheritance rights. One benefit may be the ability to obtain a state birth certificate. States that recognize foreign adoption decrees often permit adoptive par-

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ents to simply register their foreign decree to obtain a birth certificate from the office of vital records in their state of residence. For states that either allow adoptive parents to readopt, or require them to do so, the readoption procedure, much like a domestic adoption petition, will result in the creation of a state issued birth certificate. For example, the Commonwealth of Virginia has a law that permits adoptive parents to readopt their child in its courts. As a result of this process, the Virginia Department of Vital Records will issue a Virginia birth certificate, memorializing the child's legal name, date of birth and foreign place of birth. Either through regulation or readoption, it is important for every child adopted overseas to obtain an English language vital record that establishes the child's date of birth, place of birth and legal name.

Guardianship/Citizenship

It is important to distinguish the readoption of a child from the finalization of an award of guardianship in another country. In certain countries, such as Korea and India, adoptive parents, or a U.S. child-placing agency, receive guardianship over a child who then enters the U.S. with an IR4 visa. In such cases, the adoptive parents must file a petition for adoption in the U.S. so as to establish their parental rights. Such cases are not readoptions.

It is also important to remember that the readoption of a child in the U.S. is unrelated to the child's citizenship. A Federal law that went into effect in February, 2001 confers automatic

citizenship on children adopted abroad by U.S. citizens, i.e., those entering the U.S. on IR3 visas. Children who enter the U.S. on IR4 visas (i.e., with guardians) become U.S. citizens only upon adoption in the U.S.. Parents should note, however, that even with "automatic" citizenship (1) it is necessary to apply for a certificate of citizenship to document U.S. citizenship, and (2) U.S. citizenship does not create a "U.S. adoption."

The Hague Convention

Parents should also be aware that once the Hague Convention on Intercountry Adoption is implemented in the United States, readoptions may no longer be necessary for children adopted from countries that are also members of the Hague Convention. At the present time, however, the Federal regulations that will govern how the United States participates in intercountry adoptions have not yet gone into effect.

Parents returning to the U.S. with their new son or daughter have a number of important matters to consider upon their arrival home. Those considerations include obtaining proof of citizenship, the preparation of new wills and obtaining a social security number. The decision to readopt is an important consideration that should be addressed as soon as possible upon returning home. **AF**

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