

Readopting Your Internationally Adopted Child

Herbert D. Friedman, Esq.

Over 20,000 children are adopted internationally each year by United States citizens. If you are one of these adoptive parents, should you readopt your child in your home state? The answer is yes.

In many of the United States, we enjoy a broad array of state and federal protections which render final an adoption decree properly obtained upon the expiration of any appeals period. Retroactive changes of substantive law regarding adoption are not permitted. The legal systems of the countries which are the major sources of children adopted internationally into the United States (Russia, China, Korea, Guatemala) vary in the degree of diligence which is exercised to provide notice of termination of parental rights and adoption proceedings and an opportunity to object to the birthmother and any named or unidentified possible birthfather. As such, the potential for a retroactive challenge to a foreign adoption decree may exist.

An international adoption treaty, known colloquially as The Hague Treaty, has been subscribed to by many countries and sets forth minimum international standards for the adoption process. However, although Congress passed it and former President Clinton signed it in 2000 as the International Adoption Act, it has not entered into force as the implementing regulations have not yet been finalized. As a result, United States adopting parents cannot presently claim its protection in the event of a home country challenge to an international adoptive placement, whether or not that country is a Hague Treaty signatory.

Adoptive parents of children born and adopted in a foreign country should therefore readopt their child in their state's Probate Court. Counsel for the parents should request recognition of the foreign adoption decree under the legal principle of comity and other applicable law and obtain an adoption decree for the child from their state. This will give the adoptive parents and the child full legal protection against any possible subsequent legal challenge originating in the country where the child's first adoption took place.

* C 2005, Herbert D. Friedman, Esq. For further information on adoption, see Mr. Friedman's adoption website: www.massadopt.com.