

A peek inside the world of intercountry adoptions

By Todd E. Gaudin

Adoption is the process of legally obtaining the right and privilege of raising another's child as one's own. In our state, adults may adopt any other person, a close relative or a biological stranger. The adopted person can be either a child or another adult.¹ The rules regulating the process are ancient: adoption laws have roots in Roman law, and the concept is woven throughout Biblical history.² For those who cannot conceive a child or want more children, the process offers hope that a new family can be fashioned. Adoption also offers the child a better world. It is a process very dear to those who have completed it successfully, bitter to those whose efforts failed. Its goal is admirable, even spiritual, the risks of loss and surprise significant, the guarantees of complete bliss, non-existent. But, despite the financial and emotional risks, and the legal and bureaucratic tests, for many the desire to call another one's own, to accept responsibility for another human, to pass-on family history and assets to a survivor, or to rescue an innocent life, has great appeal.

Intercountry Adoptions

The Louisiana Children's Code provides rules for adopting children born in the U.S. and children born in other countries. A Louisiana citizen may file an application with a Louisiana court to adopt a foreign orphan³ or for the court to recognize a foreign adoption decree.⁴ In the former case, the child has been deemed an orphan by both the U.S. State Department and the legal authority of the child's birth country. The child immigrates to the U.S. with a lawful status and is adopted following a process much like the private adoption process for U.S.-born minors.⁵ The latter case allows a Louisiana court to recognize an adoption decree rendered by a foreign court or legal authority and make it executory here.⁶ Making it executory allows the court to order the Louisiana Vital Records Registry to issue a Louisiana Birth Certificate for the child. The new certificate would include the child's county of birth and include the adoptive parents names and information. Making the foreign decree executory also allows the Louisiana court to grant a parent's wish to give the child a different first and/or middle name.⁷

The devastating earthquake in Haiti again has brought the topic of international adoption to our newspapers' front page. There were families waiting to be united with their adopted children before the quake. Many more children may need to be united with families afterwards. For some good people, there is an urge to descend upon the country to rescue any children who appear to be orphaned and bring them back home. Though understandable, this impulse is not legally prudent for anyone: the adult, the adult's home country, the child or the child's home country – unless approval by both countries is granted. And therein lies areal bureaucratic challenge. The safeguards embedded within the approval process include steps to help ensure the child is truly an orphan and not mistaken for one. The process also must not disrupt a country's delicate balance of immigration policies and the massive system of managing bodies crossing borders. State adoption laws are passed based on a different mind-set than the federal immigration regulations.

According to Susan Freivalds, the Founder of *Adoptive Families Magazine* and past Executive Director of Adoptive Families of America, “the modern era of international adoption began after the Korean War, when Korean and Amerasian orphans were placed with families living in the United States. Since then, Americans have adopted many thousands of children from Africa, Asia, Eastern Europe, and Latin America. U.S. families adopt approximately 20,000 children from other countries each year.”

In her December 2008 article, “International Adoption—What You Need to Know,” Ms. Freivalds notes that “intercountry adoptions are handled by private non-profit adoption agencies. To enter the United States under current immigration laws, the child adopted internationally must be orphaned or abandoned or have only one living parent.” She also cautions that anyone “planning an independent intercountry adoption, make sure you receive knowledgeable counsel concerning the adoption of a child born in another country and understand your legal responsibilities and risks.

In 2000 the U.S. ratified the Hague Convention on Intercountry Adoption, an international treaty to improve accountability, safeguards, and cooperation in intercountry adoption. In April 2008, the terms of this treaty first came into effect for adoptions with U.S. citizens and children from other Hague countries. Adoptions from countries that have not joined the treaty are not affected.”Haiti is not a member of this treaty. Therefore, adoption professionals who want to work in Haiti must continue to navigate its local laws. There are sure to be many emergency policy exceptions or rules changes in the next year as both the U.S. and Haitian governments attempt to manage the crisis. “The majority of children from other countries who are adopted by U.S. families are young,” says Susan Freivalds. “Over the past 10 years, 46 percent were under 1 year of age and an additional 42 percent were between the ages of 1 and 4. Children through age 15 are eligible to come to the United States for adoption, and children aged 16 and 17 are eligible if their siblings have been adopted by U.S. families.” As of 2008, children needing adoption were most often from Asia, Eastern Europe, or Latin America, but as of 2010, that is not as true. Many countries who were once popular with U.S. families are no longer allowing adoptions. This condition is always subject to change, and change it does.

Are there other considerations?

Susan Freivalds adds that:

- 1) “Families considering intercountry adoption must understand that the background and health information they will receive about their child will likely be incomplete and may be unreliable;
- 2) Frequently changing political situations increase the uncertainties of intercountry adoption, and countries may open or close without notice, and;
- 3) Adopting a child from another country almost always means that the adoptive family will become a transracial or cross-cultural family, which presents special responsibilities. For the child to develop self-esteem and pride, family members must incorporate into their lifestyle elements of the child’s original culture, including friendships with people of the child’s ethnicity. Arming your child against racism is another duty of transracial families. Many families report, however, that embracing another culture is one of the unanticipated joys of intercountry

adoption.

How do internationally adopted children do?

”Studies show that most do well, often overcoming occasional early malnutrition and deprivation to become happy, emotionally healthy adults. Ongoing parenting education and support from competent and caring professionals (medical, psychological, rehabilitative, or educational) contribute to a child’s healthy growth.”⁸ I am aware of cases, some high profile, in which the adopted child had a severe and dangerous un-diagnosed or mis-diagnosed mental illness.⁹ These cases present as very sad stories. Families understand Adoption decrees are final and cannot be annulled except based on fraud or duress. Families undergo great trauma and long-term stress if their adopted child happens to be psychotic. These cases are very rare, but being aware of this possibility should help ensure that the placement is healthy for all involved. Knowledge really is power.

1 Act 351 of 2008 created Civil Code articles 212-214, which amended the rules for adopting adults in Louisiana.

2 Introductory notes preceding La. Ch. C. art. 1001 and 1167 are informative in this regard. See also Walter J. Wadlington III, Adoption of Persons Under Seventeen in Louisiana, 36 Tul. L. Rev. 201 (1962).

3 Defined by La. Ch. C. art. 1281.3 (5) tracking federal immigration law.

4 La. Ch. C. art. 1281.4.

5 La. Ch. C. art. 1283.1 – 1283.17.

6 La. Ch. C. art. 1282.1 – 1282.5.

7 Occasionally, the name is misspelled in the foreign decree or the parents’ did not have the freedom to choose the child’s first or middle name; sometimes they decide to add a family name.

8 Freivalds, Susan, International Adoption - What You Need to Know: Every year more American families include a child adopted from another part of the world, December 2008.

9 E.g., psychotic behavior that included violent actions and disruptive conduct.

TAX BENEFITS OF ADOPTING

For many families, a significant portion of the cost of adoption can be recouped after the fact. Depending on income level, families may qualify for the federal adoption tax credit. According to the IRS, for 2009, the maximum adoption credit has increased to \$12,150 (it was \$11,390 in 2008). Also, the maximum exclusion from income for benefits under your employer's adoption assistance program has increased to \$12,150. These amounts are phased out if your modified AGI is between \$182,180 and \$222,180. You cannot claim the credit or exclusion if your modified AGI is \$222,180 or more.

For expenses paid prior to the year the adoption becomes final, the credit generally is allowed for the year following the year of payment. A taxpayer who paid qualifying expenses in the current year of adoption, that became final in the current year, may be eligible to claim the credit for the expenses on the current year return, in addition to credit for expenses paid in a prior year. The adoption credit is not available for any reimbursed expense. In addition to the credit, certain amounts paid by your employer for qualifying adoption expenses may be excludable from your gross income.

For both the credit or the exclusion, qualifying expenses include reasonable and necessary adoption fees, court costs, attorney fees, traveling expenses (including amounts spent for meals and lodging while away from home), and other expenses directly related to and for which the principal purpose is the legal adoption of an eligible child. A Taxpayer also may be eligible to take an increased credit or exclusion for expenses related to the adoption of a child with special needs if the child otherwise meets the definition of qualifying child, is a United States citizen or resident and a state determines that the child cannot or should not be returned to his or her parent's home and probably will not be adopted unless assistance is provided.

Generally, if you are married, you must file a joint return to take the adoption credit or exclusion.¹

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