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**“READOPTION” – WHAT IS IT? DO YOU NEED TO DO IT?
SHOULD YOU DO IT? WHAT DOES IT INVOLVE?
SOME THINGS TO CONSIDER REGARDING READOPTION**

By C.J. Lyford, Esq.*

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For many of you who have adopted abroad, the adoption of your child was completed abroad and is considered final under the applicable laws of the foreign country. Now you have to decide if you must or should “readopt” under your state’s adoption laws.

1. WHAT IS “READOPTION”?

The term “readoption” generally refers to a process by which a U.S. state court in the state of the parents’ or sole parent’s, as applicable, residence reviews the details of the adoption abroad along with additional information as it deems necessary, and issues a new adoption decree, independent from the foreign decree, stating that the child has been adopted in conformity with the adoption law of the applicable state. The amount of documentation and procedures involved in a readoption vary by state. Within each state, the rules and procedures may vary by county or by the local state equivalent.

2. WHY IS IT IMPORTANT?

What is the purpose of readoption? The ultimate purpose is to ensure that your child by adoption is entitled to all of the rights that he or she should have as your child under U.S. and U.S. state law.

3. IS READOPTION THE SAME AS ADOPTION FINALIZATION?

No. “Readoption” is not the same as what is generally referred to as an adoption “finalization.” “Finalization” is necessary when the child is coming to the U.S. for purposes of adoption and there has been no adoption proceeding abroad, the adoption was not completed abroad, or the adoption is not considered final by the foreign country. This is often seen in adoptions of children from Korea or India in which only a guardianship or custodial relationship, between the child and the agency or the child and the parents, is established. In this situation, the child travels on an IR4 visa (“Immediate Relative -- Orphan to be Adopted In the United States by U.S. Citizen”) as opposed to an IR3 visa,¹ and the adoption “finalization” must take place in the U.S. according to the law of the state of the parents’ or parent’s residence.

4. WHEN IS A “READOPTION” REQUIRED?

Whether or not a readoption is required can be a matter of U.S. state law or U.S. immigration law. Readoption may be required in some states where the state does not give the same recognition and effect to a final decree of adoption issued by a foreign country as to a decree of adoption issued in that state.² Even if the state recognizes the foreign adoption and the adoption is final abroad under the law of the applicable foreign country, your child may still have to satisfy the readoption requirement of the U.S. Office of Citizenship and Immigration Services (USCIS)³ for your child to be acquire U.S. citizenship.⁴ This is the case if your child was issued an IR4 visa because you and your husband or you as a sole parent, as applicable, did not see your child before or during the adoption abroad. An IR4 visa is issued in this situation because the USCIS has interpreted the Immigration and Nationality Act (INA) as requiring that both parents, or the sole parent, as applicable, see the child before or during the adoption abroad in order for the adoption to be “final” under the INA.⁵

5. CAN THE USCIS READOPTION REQUIREMENT BE WAIVED?

According to the USCIS interim regulations, the readoption requirement in this situation may be waived by the USCIS if sufficient proof of the state’s “recognition” of the foreign adoption is provided to the USCIS.⁶ Unfortunately, the USCIS has been ambiguous about what type of “proof” or “evidence” of recognition will be sufficient for the waiver.

Until more information is available about what kind of evidence of recognition the USCIS requires for a waiver and how the USCIS implements the regulations in practice, most professionals still recommend a readoption in this IR4 situation rather than risk any uncertainty regarding a child’s citizenship, and I agree. If you live in a state that specifically provides for recognition of a foreign decree by a written law or your state court will issue a court order recognizing your child’s adoption, and you decide not to readopt, you should submit a copy of the law or the order to the USCIS along with the USCIS Form N-600 form requesting a COC⁷ and request a waiver. However, until you actually receive the COC, confirming that the USCIS has accepted the proof of state recognition that you have submitted and waived the readoption requirement, do not assume that your child is a citizen. Only then will you be certain that your child has acquired U.S. citizenship.

6. ARE THERE ADVANTAGES TO READOPTION EVEN IF IT IS NOT REQUIRED?

Yes. Many families choose to readopt their child even if not required and it is generally recommended by most adoption lawyers and other professionals. While some of the benefits and process are state specific, some of the general reasons to readopt include the following:

- Adoption is a matter of state law and each state has its own laws. (See endnote 2.) A state court adoption decree issued as a result of a readoption is fully independent of the foreign decree. As a result, if you have an adoption decree issued by a U.S. state court, all other states in the U.S. are required under the U.S. Constitution to give full faith and credit to the decree and to all of your child's rights under the decree. Therefore, obtaining a U.S. state adoption decree assures you that every state in the U.S. will recognize the decree and makes it unnecessary to rely solely on the validity of a decree issued under a foreign law.
- Federal laws, such as Social Security, can be based on a state’s underlying law regarding adoption, inheritance, etc. In certain circumstances a U.S. state issued adoption decree, as opposed to a foreign adoption decree, is required for an adopted child to be entitled to social security benefits through his or her parents or parent.^{7a}

- There are practical concerns. An adoption decree from a U.S. state court will be in English. The adoption documents that are issued from your child's country of birth are generally in a language other than English and will always need to be accompanied by separate English translations. Should you need to prove the adoption it will be easier for you or your child to be able to refer to one document that is written in English and is readily recognizable as a decree of adoption. In addition, you will have a limited number of originals of the documents from your child's country of origin. Should you lose these it will be difficult if not impossible to obtain additional "originals" or certified copies. If you have a U.S. state adoption decree you can easily obtain additional copies if necessary. For example, when you apply for a U.S. Passport for your child, you will be required to send them an original copy of the foreign adoption documents for processing of the passport. If you have a U.S. state adoption decree, you can use this in its place, and give this to the Passport Office rather than risk losing the original foreign decree.
- Usually a legal name change is part of the adoption decree so that all of your child's future documents will reflect his or her "American" name. As it is a court-ordered name change, the USCIS should issue the Certificate of Citizenship in the child's new name. Otherwise, if the child's U.S. visa and other immigration documents are in the former name some USCIS and Social Security offices will not issue documents in the child's "American" name.⁸
- Some states require that you readopt before it will issue a birth certificate for your child.^{8a}
- The readoption hearing is usually a friendly proceeding before a Judge, either in a courtroom or a small room. Usually family members and friends are allowed to come to the hearing. The hearing can serve as an opportunity for other members of your family or friends to be involved in the adoption of your child, who could not attend the initial adoption abroad.
- Finally, an adoption decree issued from a U.S. state court will provide your family with additional peace of mind and protection should the foreign country involved, or others, ever challenge the validity of the adoption of your child or adoptions from the country generally. You may at some point want to bring your child to visit his or her country of birth. A U.S. state issued adoption decree will prove and confirm his or her status as your child under U.S. laws.

7. WHAT DOES A READOPTION INVOLVE?

The specific procedures and requirements for readoption vary with the state in which the adoption proceeding is brought. Each state, and the local courts within the state, has their own set of rules and procedures that govern proceedings brought in its jurisdiction. Some have developed special procedures for readoptions involving foreign adoptions that make the process fairly simple and some states have not. Some states treat the readoption proceeding the same as if you were adopting for the first time. This may require the preparation of additional documents, a repeat home study, etc., and corresponding additional time and expense.

8. DO YOU NEED AN ATTORNEY TO READOPT YOUR CHILD?

The answer to this depends on the state and local laws of the state where you live. Some require an attorney. Some do not require it but make it very onerous for the proceeding to be completed without an attorney. If you use an attorney, make sure that you use one with experience in the international adoption area as applied to your state's laws and U.S. immigration laws.

9. WHAT ELSE SHOULD YOU DO?

Whether or not you readopt your child, please make sure that your child is a U.S. citizen and can prove it, by getting documentation of citizenship through a Certificate of Citizenship.

See my comments, entitled “WHY AND HOW DO YOU GET PROOF OF CITIZENSHIP FOR YOUR FOREIGN-BORN ADOPTED CHILD?” (available upon request) Remember, as your child was not born in the U.S., a U.S. state issued birth certificate alone is not proof of your child’s U.S. citizenship.⁹

PLEASE NOTE THAT MY COMMENTS ARE GENERAL IN NATURE AND ARE NOT INTENDED TO BE COMPREHENSIVE. THEY ARE NOT LEGAL ADVICE NOR SHOULD THEY BE RELIED UPON AS LEGAL ADVICE.

I am an attorney and the mother of a ten-year-old child from China, adopted in 1994, with a private practice in the areas of immigration/citizenship law and international adoption. Please feel free to contact me if you have any questions about the above comments, immigration or citizenship issues, or other legal issues involved in the foreign adoption process. I provide legal services and consultation throughout the U.S. and abroad in these areas for adoptive parents and agencies to address USCIS, consulate, and related immigration problems. I also handle foreign adoption finalizations and readoptions, as well as domestic adoptions, particularly involving foreign-born children, in the Commonwealth of Pennsylvania.

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ENDNOTES

¹ If a child is issued an IR3 visa (“Immediate Relative -- Orphan Adopted Abroad by U.S. Citizen”), this indicates that the USCIS considers the adoption abroad to be final. You can determine what classification of visa your child was issued by looking at the stamp in your child’s foreign country passport to see whether the designation is “IR3” or “IR4”.

² Adoption is a matter of state law and each state has its own set of laws regarding what effect it will give decrees issued from foreign countries, such as adoption decrees. For those who live in Pennsylvania, I have also prepared comments specific to readoption in Pennsylvania that are available upon request.

³ As of March 1, 2003, most of the INS functions have been transferred to a new department, the “Department of Homeland Security” (DHS), and the “INS” no longer exists. Most of the immigrant service functions such as immigrant visa petitions (e.g., I-600 Orphan Petitions), citizenship, etc., will be handled by the new U.S. Office of Citizenship and Immigration Services (USCIS).

⁴ The Child Citizenship Act of 2000 (CCA) provides for the “automatic” acquisition, that is acquisition as a matter of law, of U.S. citizenship to many children of U.S. citizens that are born abroad (adopted and not adopted) provided that certain qualifications are met. One of the qualifications is that the adoption be “final.”

⁵ The USCIS requirement is based on its interpretation of INA sec.101 (b)(1)(F), 8 U.S.C.A. sec. 1101(b)(1)(F), regarding a full and final adoption and other sections.

⁶ June 13, 2001 Federal Register Notice re: “INS Regulations and Comments regarding implementation of the CCA,” 66 FR 32138, Interim Rule but effective upon publication (June 13, 2001) at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2001_register&docid=fr13jn01-13. See also 8 C.F.R. sections 320, 322 and 341. (Note that in the January 2004 “CCA Program Update” the USCIS states that it is in the process of reviewing comments in response to the June 13, 2001 Notice, and is “in the process of drafting the final regulation.”)

⁷ The N-643 form, the form previously used to request a Certificate of Citizenship for an adopted child, has been replaced with the revised N-600 form. You can download the revised Form N-600 and its instructions at: <http://www.immigration.gov/graphics/formsfee/forms/n-600.htm> or order it by phone at 1800-870-3676. (Note that the correct fee for a Certificate on behalf of an adopted child currently is \$200) See also the October 1, 2003 Federal Register Notice, CIS: Introduction of revised N-600 and N-600K, 68 FR 56643, effective October 31, 2003, at: <http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/2003/03-24803.htm>

As a result of the USCIS “CCA Program”, since January 20, 2004, Certificates of Citizenship have been issued automatically to children who enter the U.S. on IR3 visas within 45 days of entry, free of charge, Please note however, that Certificates are not be provided for children who enter on IR4 visas. In addition, from what is written it does not appear that Certificates for children already in the U.S., will be provided under this program. As a result, I recommend that you obtain a COC now to prove your child’s citizenship. See: USCIS publications regarding the CCA Program: “Child Citizenship Program Fact Sheet” at: http://uscis.gov/graphics/services/natz/CCAFacts_Jan_04.pdf; and “CCA Program Update” at: http://uscis.gov/graphics/services/natz/CCA_Update.htm

^{7a} The definition of “legally adopted children” in the Social Security regulations at 20 CFR sec. 404.356 references that it applies the “adoption law of the state or foreign country where the adoption took place, ...” However, in the situation where a “legally adopted” child is adopted after the parent is receiving benefits, 20 CFR sec. 404.362 states that the adoption must be “issued by a court of competent jurisdiction within (my emphasis) the United States” before the child is entitled to benefits. See also the Social Security Handbook.

⁸ Please make sure that if you change your child’s name in the readoption, that your child’s former name is clearly referenced within the state issued adoption decree along with the new “American” name, so that it is clear that the decree is referring to the same child. Otherwise there have been reports that USCIS officials have questioned this and required a separate court order stating that both names are referring to the same child.

^{8a} Some, such as Pennsylvania, do allow you to obtain a birth certificate without readoption, by registering the foreign court adoption decree with the applicable county of residence. Upon registration, the parent(s) can then obtain a Pennsylvania birth certificate for the child.

⁹ The birth certificate that is issued for your child from your state of residence will be in the format of the state’s birth certificate and will list you as the child’s parents or parent. However, it will still indicate the actual country of your child’s birth. For purposes of these comments, only if your child was born in the U.S. would a birth certificate be proof of U.S. citizenship.