**International Adoption in Wisconsin:**
**Warnings and Changes to the Re-Adoption Laws**

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(As appeared in the newsletter of
the Children and the Law Section of the State Bar of Wisconsin, 11/2017)

Last summer, Wisconsin's international adoption laws changed, in particular its re-adoption law. The term "re-adoption" refers to an adoptive parent adopting their child again, in the state court where they reside, after having fully and finally adopted the child in the child's country of origin. It is a concept that has been universally recommended to adoptive parents for decades by international adoption attorneys (meaning, immigration attorneys who handle the foreign and federal immigration components of international adoptions).

The recommendation to adoptive parents has been this: you must bring your child home and re-adopt in Wisconsin state court. You want to put another court order between your family and the laws of the child's country of origin. Those laws can change, sometimes very quickly and sometimes very badly. You've probably heard such things in the news: in 2012, Russia froze all international adoptions with the United States due to an unrelated diplomatic event. Plus, after a re-adoption, you get a Wisconsin "Certification of Birth Facts," which is basically a Wisconsin birth certificate for children born abroad. It is very handy. If you need a birth certificate 17 years from now for the child's college applications, do you want to have to write to the Guatemalan government or go downtown to the Wisconsin Vital Records Office? And for some types of U.S. visas, re-adoption is actually *required* in order for the child to obtain U.S. citizenship on the basis of the international adoption.

**The Old Framework**

Wisconsin's former statutes broke international adoptions into two categories: those with full and final adoption orders from the country of origin; and those with only guardianship or custody orders from the country of origin. The first category was governed by Wis. Stat. § 48.97. The second category was governed by Wis. Stat. § 48.839.

The old Wis. Stat. § 48.97 required that the foreign adoption be approved by the Wisconsin Department of Children and Families ("DCF") prior to the placement, although it never specified exactly how this approval fit into the larger foreign and U.S. immigration process. If the placement was not preapproved by DCF, the statute required re-adoption under the adoption statutes of Ch. 48, Wis. Stat.

Wis. Stat. § 48.839 required a somewhat elaborate procedure for adoptive parents to bring a child to Wisconsin to be adopted here, versus adopted in the country of origin. The procedure required posting a bond as insurance that the adoption would be finalized and that the child would not become a ward of the state or recipient of public assistance. It required submitting proof to DCF of the termination of parental rights in the country of origin, including sworn statements of the

law in that country in some cases. It required filing for a TPR and/or adoption, depending on the facts of the case, in state court within 60 days of the child's arrival in Wisconsin. And it required a current home study. This process was sometimes mistakenly referred to as a re-adoption, as well. That is not accurate. Here, there is only one adoption, not two: the one in Wisconsin state court, with a guardianship from the country of origin. This is simply an adoption finalization.

This statutory framework has now changed with 2015 Wisconsin Act 380. Its new framework applies to children who are admitted to the United States on or after July 1, 2016. Otherwise, the old framework still applies.

**The New Framework**

Wisconsin's new statute properly breaks international adoptions into two different categories, based on the type of visa the child entered on: IR-3 and IH-3 visas, versus IR-4 and IH-4 visas.

Now, the new version of Wis. Stat. § 48.97 provides a less onerous process for adoptive parents when they bring their child home to Wisconsin on an IR-3 or IH-3 visa. Now in IR-3 and IH-3 cases, preapproval from DCF is no longer required, nor is a re-adoption. Instead, Wis. Stat. § 48.97(2) now provides for an easier process of "registering" the foreign adoption under Wisconsin law. This is because the new subsection requires that Wisconsin recognize adoptions of IR-3 and IH-3 children, without any preapprovals or preconditions and without requiring re-adoption. In fact, this change was a long time coming and was necessary in order for Wisconsin to comply with federal and international law which took effect in 2008, namely the Intercountry Adoption Act ("IAA") and the Hague Convention on Intercountry Adoption. *See* IAA §§ 301 and 501 (requiring that all federal and state agencies and courts give full recognition to adoptions certified as compliant with the Hague by the U.S. State Department).

Parents of IR-3 and IH-3 children must file a letter or application to "register" the adoption with the Wisconsin Circuit Court in their county of residence within 365 days of the child's admission to the United States. They do not need a home study update. If the letter or application meets the requirements of Wis. Stat. § 48.97(2)(c), the Wisconsin Circuit Court "shall" enter a court order registering the foreign adoption order, may change the name of the child, and shall transmit the order to Vital Records for issuance of a Wisconsin Certification of Birth Facts. The new process does not require a court hearing and has the same effect under Wisconsin law as an adoption order granted following a hearing.

For all other internationally adopted children, the old procedure in Wis. Stat. § 48.839 must be completed as described above. That statute was not changed by 2015 Wisconsin Act 380.

2015 Wisconsin Act 380 was the result of the work of the Assembly Study Committee on Adoption Disruption and Dissolution. The Committee was formed during the national news media coverage a few years ago of how some Americans are "re-homing" their internationally adopted children without any oversight by a court or agency and often without home studies on the new family.

**Re-Adoption May Still Be Recommended**

It is important to note that nothing in the new law prohibits re-adoption of IR-3 and IH-3 children. It is still possible to finalize a re-adoption in those cases; it just isn't *required* by Wisconsin law, nor can it be under federal and international law. Many international adoption and immigration attorneys, including the authors, still recommend re-adopting, versus just "registering" the adoption under state law. Adoptive parents should put an adjudicated, not just rubberstamped, court order in between them and changes in the law in the country of origin. One of the co-authors has even had a case in which a country tried years later to undo an adoption of a child and "recall" the child back to the country of origin. The re-adoption in that case was central to the adoptive parents' response to the foreign government.

Wisconsin's new re-adoption law, or rather the "registration" law, helps to modernize Wisconsin's approach to international adoption and bring it into compliance with the Hague Convention on Intercountry Adoption and the federal laws that implement that treaty. That is nice progress. However, whether or not to re-adopt anyway should be a decision for the parents to make, and they should make it in consultation with an immigration attorney who practices international adoption law.

**Warning**

A final note about international adoptions while we have this audience, or rather, a warning we wish to spread as far and wide as possible: attorneys, judges, guardians *ad litem*, and social workers should be aware that some seemingly domestic adoptions are in fact international adoptions that must be finalized under the Hague Convention on Intercountry Adoption.

Example: child born in Vietnam enters the United States at age 13 on a student visa. Child attends one year of high school in Arizona and stays with unrelated host family. Child visits aunt and uncle in Wisconsin for summer break. The family bonds and wishes to adopt the child. Birth parents agree.

Answer: this is not a domestic adoption. This is a Hague adoption, which must comply with the treaty. The child cannot just be adopted under Wisconsin law. Doing so will have no immigration benefit for the child and certainly will not make the child a U.S. citizen. Doing so will actually harm the child's immigration status, make the child ineligible for a student visa renewal, and could be viewed as immigration fraud. The Wisconsin adoption may even need to be vacated later and could lead to a malpractice claim. The first step in a case like this should be a referral to an immigration attorney with international adoption experience.

Another example: child born in Mexico is removed from her parent's home under a CHIPS order. Child is placed with foster family. County wishes to TPR the birth parents and allow the foster parents to adopt. Child has been in the United States for 10 years. This would be a Hague adoption. In order for the child to receive any immigration benefit, Mexico must be involved in the adoption. The adoption cannot be finalized under Wisconsin law alone. (This could also be a Special Immigrant Juvenile case, a special visa available to children in state dependency proceedings who have been abused, neglected, or abandoned by their birth parents.)

A good rule of thumb: if the child was not born in the United States, an immigration attorney should be consulted before any adoption, guardianship, or similar state court proceeding is commenced (or if CHIPS, as soon as possible after custody of the child is taken by a county). To determine whether a country is party to the Hague Convention on Intercountry Adoption, see the country-specific fact sheets at the U.S. State Department Office of Children's Issues website: https://travel.state.gov/content/adoptionsabroad/en/country-information.html.