



Adoption of Russian Children with Severe Illnesses by Foreign Couples

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**ADOPTION OF RUSSIAN CHILDREN
WITH SEVERE ILLNESSES
BY FOREIGN COUPLES**

The protection of families, children and social security is included in the area of the joint competence of the Russian Federation and its subunits. Article 76.2 of the Constitution states that this area is regulated by Federal and state laws. State regulations cannot contradict Federal laws. The issue of adoption is regulated by the RUSSIAN FEDERATION FAMILY CODE,¹ and by the Statute on Adoption of Children, Who Are Russian Citizens, by Citizens of the Russian Federation and Foreigners. This latter statute was approved and signed by the Chairman of the Russian Government on September 15, 1995.² The elaboration of the Law on International Adoption is currently in process.

Under the Law, both foreigners and Russian citizens can adopt children. The single difference is that an adoption by foreigners is allowed only if it is impossible for a Russian couple to adopt the child. There are no preferences or limitations regarding to the nationality of the adopting foreigners. However, the Law takes into account the child's ethnic, religious, cultural and language background to keep succession in his education.³ The Law does not allow the adoption of brothers and sisters by different persons.

According to the legal procedure for adoption, the person who wants to adopt the child shall addresses the adoption statement signed by the petitioner and his/her spouse to the Department of Education in the state where the child resides. Within ten days, the Department of Education makes an enquiry for confirmation to the Russian Federation Ministry of Education. After the adoption is approved by the executive authorities, the case is transferred to the federal district court for the passing of the adoption decree by the judge. All cases shall be resolved with the participation of the local guardianship authorities. The adoption is effective on the day the court decision enters into legal force. Within the three following days, the court is obliged to send a copy of the adoption order to the state authorities of the civil registration.

The new Russian legislation is not fully in accordance with the Hague Convention of May 29, 1993, on the Protection of Children and Intercountry Adoption. Russia does not yet have the appropriate regulations, and the regulations in force do not foresee the establishment of a particular central authority in charge of adoption as is required by the Convention. During the period between December 1992 and March 1995, a moratorium on intercountry adoption was in effect due to many

¹ SOBRANIE ZAKONODATEL'STVA (Official Gazette of the Russian Federation), No.1, Item 16 (1996).

² *Id.* No. 39, Item 3768 (1995).

³ CODE OF MARRIAGE AND FAMILY OF THE RUSSIAN FEDERATION, art. 123.

legal violations in that area. Since the new legislation was passed, such adoptions have been allowed for foreigners who wish to adopt Russian children.

Although, the Russian FAMILY CODE states that "the adoption of children who are Russian citizens and reside on Russian territory by foreigners shall be effected under legislation of the country of the adoptive parent citizenship,"⁴ some necessary conditions shall be executed. These include:

- the child's consent if the child is ten years of age or older;
- the consent of his parents or legal guardians unless they are unknown, are recognized by the court as legally incapable, or have been deprived of parental rights;
- the consent of the spouse, if the child is adopted by one of the spouses;
- the age difference between the adopted child and adoptive parent shall be at least 16 years; and
- the child shall be registered at the Federal Bank of Information on Children Without Parental Guardianship.

Russian children can be adopted by foreigners after the expiration of the six-month period following the child's registration at the Bank. For children in the age under three, this period consists of three months. Also, unmarried people cannot jointly adopt the same child.

The Law on Citizenship of the Russian Federation determines that if the child who was a citizen of Russia was adopted by the citizen of another country, he can keep his Russian citizenship. The adopter may appeal to change the citizenship of the adopted child if the child will obtain another citizenship.⁵

The Statute on Adoptions⁶ settles two conditions where the court can revoke an adoption. These include the violation of child's rights determined by Russian laws or international treaties, and the nonconformity of the adoption with the child's interests.

The analysis of the Russian legislation on adoption allows the conclusion that Russia and its states where children are born and reside recognizes the adoption of such children by foreigners. There is no obstacle if such a child acquires the adoptive parent's citizenship, if all the formal procedures are executed. There are no additional rights or restrictions regarding foreigners who wish to adopt a child from the Russian Federation who has a severe illness.

⁴ *Id. art. 165.*

⁵ *Law on Citizenship of the Russian Federation, passed Nov. 28, 1991, amended June 17, 1993, Ved. 1993 No. 29, Item. 1112.*

⁶ *Supra* note 2, art. 44.

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