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**Intercountry Adoption: Testing Out the Child Before You
Purchase Intensive look at the Home Study and Placement
Supervision of Intercountry adoption**

*Jessica Etienne, Esq.**

I. INTRODUCTION

Woman adopts child from Russia; brings child home; the child then Suffers from a mental illness. Woman decides she does not want the child. Puts child on plane back to Russia, with note that states “This child is mentally unstable. He is violent and has severe psychopathic issues... After giving my best to this child, I am sorry to say that for the safety of my family, friends, and myself, I no longer wish to parent this child.” Ladies and gentlemen, I give you Intercountry adoption. This is the Story of Torry Hansen, which ultimately caused Russia to suspend direct adoption with the U.S. ¹

Tory Hansen, by help of a Washington State Adoption agency, adopted a child from Russia.² The young boy became known as Justin Hansen.³ Only after seven months, of officially bringing the child home to Tennessee, Ms. Hansen decided she no longer wanted Justin.⁴ Ms. Hansen sent him back to Russia on a one-way ticket, unaccompanied with no provisions and no luggage, only a backpack.⁵ Ms. Hansen pinned the note to the child’s backpack addressed to the Ministry of Education in Moscow.⁶ Ms. Hansen ended up being sued by the City Council of the Tverskoy Intra-City Municipality in the City of Moscow in Russia and the Washington state Adoption Agency.⁷ Russia annulled the adoption on the

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¹*Justin A.H. v. Hansen*, No. M2013-00292-COA-R3-CV, 2014 WL 3058439 (Tenn. Ct. App. July 8, 2014).

²*Id* at 3-4.

³*Id* at 3.

⁴*Id* at 4-5.

⁵*Id* at 5.

⁶*Id*.

⁷*Id* at 6.

grounds that the way Ms. Hansen treated Justin was cruel treatment of a minor child and it was in the best interest of Justin that he no longer be with her.⁸

The Washington State Adoption Agency filed its own lawsuit for child support on the grounds that Ms. Hansen had abandoned Justin and asked the court to conduct a hearing to determine whether the child was dependent and neglected.⁹ When Ms. Hansen used the Washington State Adoption Agency she signed the “Child Acceptance and Placement & Post-Placement Agreement” agreeing to remain financially responsible for all costs of care for the child, even if the child were removed from Ms. Hansen’s home.¹⁰ Also, Ms. Hansen agreed to reimburse the Washington State Adoption Agency for any and all costs incurred by the Agency for the care of the child after removal from Ms. Hansen’s home.¹¹ Ms. Hansen did not cooperate with these proceedings and a default judgment was entered on behalf of the Washington state Adoption Agency.¹² The Washington Adoption Agency suit against Ms. Hansen was never decided on the merits of the case.¹³

Intercountry adoption is the process by which you adopt a child from a country other than your own through permanent legal means and bring the child to your country of residence to live with you permanently.¹⁴ Intercountry adoption is similar to domestic adoption; the difference is the laws that make it possible for you to bring the child to live where the parent is permanently living.¹⁵ These particular law differences have caused strife between advocates and countries for or against Intercountry adoption. This Note addresses one of the major differences within National and Intercountry adoption, with a particular focus on Florida’s adoption process and Non-Convention Country, Korea, international adoption process: placing the Home Study and Placement Supervision in the discretion of the Prospective Adoptive Parent rather than the International Agency.

⁸*Id.* at 13.

⁹*Id.* at 7.

¹⁰*Id.* at 4.

¹¹*Id.*

¹²*Id.* at 26.

¹³*Id.* 38-39.

¹⁴*Intercountry Adoption*, <https://travel.state.gov/content/adoptionsabroad/en/adoption-process/what-is-intercountry-adoption.html> (last visited November 2, 2016).

¹⁵*Id.*

Part II of this Note will analyze the Legislative history of Adoption in the U.S. It will then analyze Florida's adoption process. And the Note will look at the problems and possible solutions to the critique of Florida's Placement Supervision within its Adoption Process. After the U.S. Adoption process, has been analyzed, Part III will turn to the Intercountry Adoption process. It will distinguish between the process of a Convention Country and Non-Convention Country (Korea). I will compare the similarities and the differences between the processes.

Adoption in general has long been questioned on whether the process is truly in the best interest of the child or the Prospective Adoptive Parent.¹⁶ Legislation does provide that when conflicted with decisions dealing with the adoption process to look at it from the prospective that is in the best interest of the child.¹⁷ In the conclusion, Part IV of this note will compare the Intercountry Adoption Process to Florida's and provide possible solutions to future problems of Intercountry adoption between Florida and Korea in respect to the placement agreement and finalizing the adoption.

II. UNITED STATES ADOPTION PROCESS

A. HISTORY OF ADOPTION IN THE UNITED STATES

In 1851, Massachusetts passed the first modern adoption law, recognizing adoption as a social and legal operation based on child welfare rather than adult interests.¹⁸ Historians consider the 1851 Adoption of Children Act an important turning point because it directed judges to ensure that adoption decrees were "fit and proper."¹⁹ For the first time, judges had the authority to determine whether the adoptive parents had sufficient ability to bring up the child and whether it was "fit and proper" that the adoption take place.²⁰ However, Adoption can go back to as early as 1693.²¹ There

¹⁶Donovan M. Steltzner, Note, *Intercountry Adoption: Toward a Regime That Recognizes the "Best Interests" of Adoptive Parents*, 35 CASE W. RES. J. INT'L L. 113 (2003).

¹⁷Laura A. Turbe, Comment, *Florida's Inconsistent Use of the Best Interests of the Child Standard*, 33 STETSON L. REV. 369 (2003).

¹⁸*Timeline of Adoption History*, THE ADOPTION HISTORY PROJECT, <http://pages.uoregon.edu/adoption/timeline.html> (last updated Feb. 24, 2012).

¹⁹*Id.*

²⁰Alice Bussiere, *The Development of Adoption Law*, 1 ADOPTION Q. 2 (1998). <http://www.ylc.org/wp/wp-content/uploads/Adoption%20Law.pdf>.

²¹*Id.*

is Evidence from will dating back to 1693 that individuals made bequests to and provision for adopted children in colonial times.²² Many children were bound out or apprenticed to families who need them as workers, without any formal legal procedure.²³ Individuals wanting formal recognition of an adoption obtained it by having the state legislature pass a private bill.²⁴ Civil laws in Texas and Louisiana before the passing of the first adoption law provided for adoption by deed.²⁵ Although, adoption had been around for centuries, the emphasis on welfare of the child was new.²⁶ Massachusetts Board of State Charities began paying for children to board in private family homes: in 1869, an agent was appointed to visit children in their homes.²⁷ This was the beginning of placing-out, a movement to care for children in families rather than institutions.²⁸

Between 1910 and 1930 first specialized adoption agencies were founded and Congress created the U.S. Children's Bureau in the Department of Labor "to investigate and report on all matters pertaining to the welfare of children and child life among all classes of our people."²⁹ Although child welfare was the primary concern, the new laws provided protection for the birth parents and the adoptive parents as well.³⁰ It prevented them from making pretentious and uninformed decisions.³¹ In the 1930's, Iowa was the first state to begin administering mental health tests to all children placed for adoption in hopes of preventing the adoption of retarded children without prior notice or knowledge.³² This policy inspired nature versus nurture studies, which eventually served to promote policies of early family placement.³³ Following this the Child Welfare League of America (CWLA) created the first initiative for minimum standards of permanent (adoptive) and temporary (foster) placements.³⁴ It would not be until 1957 that the CWLA would

²²*Id.*

²³*Id.*

²⁴*Id.*

²⁵*Id.*

²⁶*Id.*

²⁷*Timeline of Adoption History*, THE ADOPTION HISTORY PROJECT, <http://pages.uoregon.edu/adoption/timeline.html> (last updated Feb. 24, 2012).

²⁸*Id.*

²⁹*Id.*

³⁰*See generally, id.*

³¹*See generally, id.*

³²*Id.*

³³*Id.*

³⁴*Id.*

publish the Standards of Adoption.³⁵ The focus in adoption in the 20th century continued to be on older children who had been abandoned or where their parents could not care for them anymore because early on child welfare experts recognized the importance of early attachment. Those experts now became more concerned about placing children in uncertain backgrounds, and therefore, began to keep infants in study homes for 6 months to a year before placing them for adoption.

By the 1950s, placement of children for adoption in the first year of life began to be the common way of adoption, and through the 1960s most adoptive parents sought to adopt infants.³⁶ Adoption practice attempted to mirror the “ideal family” to as great an extent as possible.³⁷ Adoption agencies promoted their ability to guarantee a perfect child, and children with perceived defects were assumed to be unadoptable.³⁸ Agencies sought to make the adoptive family as much like a birth family as possible, and tried to match children and families with similar characteristics. Children were issued new birth certificates with the adoptive parents’ names, adoption records were sealed, and identifying information about the child’s birth family and past remained secret.³⁹

To give adoptive families a fresh start and to protect birth parents, states made adoption records private. Minnesota was the first state to pass the first law making court adoption records confidential in 1917, and other states passed similar laws over the next few decades.⁴⁰ Court adoption records and birth records are generally inaccessible except by court order.⁴¹ By the early 1950s, most states had laws protecting the identification of the birth parents.⁴²

³⁵*Id.*

³⁶See, Cole, E., *Foster Children In The Courts*, 449-487 (1983); Ruth-Arlene W. Howe, *Adoption Practice, Issues & Laws 1958-1983*, 17 FAM L.Q. 173-197 (1983).

³⁷See, e.g., James B. Boskey, *Placing Children for Adoption*, ADOPTION LAW & PRACTICE 3-1, 3-6 Joan H. Hollinger ed., 1992).

³⁸Cole, *supra* note 36.

³⁹See generally, Burton Z. Sokoloff, *Antecedents of American Adoption*, *Future of Children*, Spring 1993 at 17.

⁴⁰See, e.g., Lois R. Melina & Sharon K. Roszia, *The Open Adoption Experience*, 7-8 (1993).

⁴¹See generally, Joan H. Hollinger et al., ADOPTION LAW & PRACTICE vol. 1, ch. 1-1 (Matthew Bender 2000).

⁴²Annette Baran & Reuben Pannor, *Perspectives on Open Adoption*, 3 *Future Children – Adoption* 119, 124 (1993).

The first Uniform Adopting Act was proposed in 1953 but only a few states adopted it.⁴³ It was replaced twice, now known as the Uniform Adopting Act (UAA) of 1994.⁴⁴ The Act is designed to facilitate the completion of adoptions based on consent, expedite the resolution of contested proceedings, standardize the content and procedural fairness of consents and relinquishments, bolster the finality of adoptions, and allow birth and adoptive families to decide for themselves how “open” or “closed” they want their relationships to be.⁴⁵ The Act is broader than most state adoption laws, causing it to cover many areas of adoption that the states adoption law does not, especially Florida adoption law.⁴⁶ The Act also addresses those areas of adoption law that provides the ground for many of the challenges to adoptions such as consent, notice, and finality.⁴⁷ The Act is much more detailed and leaves less room for adoptions to be subjected to challenge and less room for children to be exposed to potential harm.⁴⁸

B. FLORIDA’S ADOPTION PROCESS

Florida is one of the states that has not adopted the Uniform Adopting Act.⁴⁹ While the Adoption of the Uniform Adopting act

⁴³H. Joseph Gitlin, ADOPTIONS: AN ATTORNEY’S GUIDE TO HELPING ADOPTIVE PARENTS 32 (1987) (Only seven states adopted the early versions of the Uniform Adoption Act: Alaska, Arkansas, Montana, New Mexico, North Dakota, Ohio, and Oklahoma).

⁴⁴Mishannock Robbins Arzt, *In The Best Interests of the Child: The Uniform Adoption Act*, 25 STETSON L. REV. 835 (1996).

⁴⁵Joan Heifetz Hollinger, *The Uniform Adoption Act: Reporter’s Ruminations*, 30 FAM. L.Q. 345, 345-351 (Summer 1996).

⁴⁶Arzt, *supra* note 44 at 7.

⁴⁷*Id.* at 842.

⁴⁸UAA §§ 2-101, 2-201, 3-201, -504(c), -707 & cmt. (Examples of provisions that specifically take into consideration the best interests of the child include the requirement of a preplacement evaluation, the required appointment of a guardian ad litem in contested adoptions, the requirement that the best interests of the child be considered in a proceeding to terminate a parental relationship with the child, and the provisions limiting the time within which a challenge may be brought).

⁴⁹Mark Hansen, *House of Delegates Backs Model Laws: Uniform Adoption Act Receives Key Endorsement from ABA*, A.B.A. J., Apr. 1995, at 120, 120. (The UAA has been put before the Florida Legislature. In March 1995, the Florida House of Representatives introduced a bill adopting the UAA and repealing Florida’s current adoption laws. The legislation was referred to the House Committee on the Judiciary, to the House Committee on Finance and Taxation, and to the House Committee on Appropriations. However, the legislation died in the Committee on the Judiciary in May 1995 and has yet to be reintroduced. Fla. H.R. B. 65, 1995 Reg. Sess. (1995), *summary of bill’s status available in*

was put before Florida Legislature, it died in the Committee on the Judiciary in May 1995 and has yet to be reintroduced.⁵⁰

Adoption in Florida is governed by Chapter 63 of the Florida Statute, Florida Adoption Act.⁵¹ Florida requires the use of an adopting entity that will assume responsibilities of what is required in the Florida Adoption Act.⁵² This make it more effective for the state to provide a stable and permanent home for adoptive children in a prompt manner, to prevent the disruption of adoptive placements, and it holds parents accountable for meeting the needs of the children.⁵³ From the Prospective Adoptive Parent aspect⁵⁴, the process begins with mandatory Adoptive preparation courses.⁵⁵

They are designed to give you the opportunity to assess yourself and your family as well as to explore and learn about adoption issues.⁵⁶

Before the child is placed in the home, a home study is also required. This is where a local, state and federal background checks will be conducted on all adults living in the household.⁵⁷ The only exception to the preliminary home study is if the adoptee is an adult or the petitioner is a stepparent or a relative; then for a preliminary home study to be conduct the court must order it for a good cause.⁵⁸ Each Prospective Adoptive Parent will be required to supply such things as references from your employer and school officials if you have children in school, and character references from individuals who have known you and your family.⁵⁹ Florida Courts have

WESTLAW, BILLSTRK-OLD database. See also 29 FLORIDA LEGISLATURE FINAL LEGISLATIVE BILL INFORMATION, 1995 REGULAR SESSION 208 (1995) for a summary of the bill's treatment by legislature and its status).

⁵⁰*Id.*

⁵¹FLA. STAT. ANN. § 63.012 (2016).

⁵²FLA. STAT. ANN. § 63.039(2) (2016).

⁵³FLA. STAT. ANN. § 63.022 (2016) (this statute illustrates the legislative intent based on findings and demonstrates the States' compelling interest on requiring such adoption procedures)..

⁵⁴FLA. STAT. ANN. § 63.042 (2016) (A prospective parent is a married couple...child).

⁵⁵Child Welfare League of America, *PRIDE Model of Practice: Parent Resources for Information, Development, and Education*, CWLA.ORG, <http://www.cwla.org/pride-training> (Last Visited Jan 15, 2017) (CWLA and...assurance process).

⁵⁶Florida Department of Children and Families, *The Road to Adoption*, ADOPTFLORIDA.ORG, <http://www.adoptflorida.org/roadtoadoption.shtml> (Last Visited Nov. 2, 2016).

⁵⁷FLA. STAT. ANN. § 63.092(3) (2016) (the preliminary...receipt of disclosure).

⁵⁸*Id.*

⁵⁹Florida Department of Children and Families, *supra* note 56.

determined that it is at the discretion of the judiciary to make the decision of the prospective parent's home being suitable for a child.⁶⁰ If your home is approved, then you go through the process of being matched with a child.⁶¹ A Prospective Parent is able to search online for children or attend recruitment activities, such as picnics or events, that are hosted for foster children who are available for adoption to be in attendance.⁶²

Upon finding a child, the prospective parent, agency and foster parents learn as much as they can about one another before the child is placed with the Prospective Adoptive Parent.⁶³ The Prospective Adoptive Parent(s) may talk to the child's foster parents or social worker to gain valuable insight into the child's personality and background.⁶⁴ At the same time the Prospective Adoptive Parent is learning about the child, the adoption worker is sharing information about the Prospective Adoptive Parent(s) family with the child.⁶⁵ Some families prepare a photo album with pictures of their home, family members, family pets and the general neighborhood as a good way to introduce themselves to the child prior to an initial visit.⁶⁶ When the child is comfortable, an initial short visit occurs.⁶⁷ This initial visit is followed by longer visits until the adoption worker, child and family agree that an overnight or extended visit can occur.⁶⁸ There is no set timeframe for getting to know each other.⁶⁹ The official placement in the Prospective Adoptive Parent(s)'s home will occur when the Prospective Adoptive Parent, the child and the adoption worker determine that the child is ready.⁷⁰

The Agency, in charge of the adoption process, has 90 days from placement to do a final Home investigation.⁷¹ The final home

⁶⁰See FLA. STAT. ANN. § 63.142(4) (2016).

⁶¹See *Generally*, Florida Department of Children and Families, *supra* note 56.

⁶²*Id.*

⁶³*Id.*

⁶⁴*Id.*

⁶⁵*Id.*

⁶⁶*Id.*

⁶⁷*Id.*

⁶⁸*Id.*

⁶⁹*Id.*

⁷⁰*Id.*

⁷¹FLA. STAT. ANN. § 63.125 (2016) ("The final home investigation must include: (a) The information from the preliminary home study. (b) After the minor is placed in the intended adoptive home, two scheduled visits with the minor and the minor's adoptive parent or parents, one of which visits must be in the home, to determine the suitability of the placement. (c) The family social and medical history as provided in s. 63.082. (d) Any other information relevant to the

investigation must be conducted before the adoption becomes final.⁷² The investigation may be conducted by a licensed child-placing agency or a professional in the same manner as provided in the Florida Adoption Law.⁷³ The Department of Children and Families is required to perform the home investigation only if there is no licensed child-placing agency or professional in the county in which the Prospective Adoptive Parent resides.⁷⁴ This is to ascertain whether the adoptive home is a suitable home for the minor and whether the proposed adoption is in the best interest of the minor or the Prospective Adoptive Parent.⁷⁵ Unless directed by the court, an investigation and recommendation are not required if the petitioner is a stepparent or if the minor is related to one of the adoptive parents within the third degree of consanguinity.⁷⁶ During that period before the adoption is finalized, the Prospective Adoptive Parent or the Child-Placing Agency, can remove the child if determine not a permanent fit for the child or the Prospective parent.⁷⁷

Even once the adoption is finalized the Prospective Parent or any person with the right to do so may seek to invalidate the adoption judgment.⁷⁸ A judgment terminating parental rights pending adoption is voidable and any later judgment of adoption of that minor is voidable if, upon a parent's motion for relief from judgment, the court finds that the adoption substantially fails to meet the requirements of Chapter 63, Florida Statute for Adoption.⁷⁹ The motion must be filed within a reasonable time, but not later than 1 year after the date the judgment terminating parental rights was entered.⁸⁰

C. PROBLEMS IN THE FLORIDA ADOPTION PROCESS

There are several problems within the Florida Adoption process. One problem with the Florida Adoption process is the ambiguous one-year statute of limitation pertaining to the revocation

suitability of the intended adoptive home. (e) Any other relevant information, as provided in rules that the department may adopt").

⁷²*Id.* § 63.125(1).

⁷³*Id.*

⁷⁴*Id.*

⁷⁵*Id.*

⁷⁶*Id.*

⁷⁷FLA. STAT. ANN. § 63.092 (2016).

⁷⁸*See Generally id.* § 63.142(4).

⁷⁹*Id.*

⁸⁰*Id.*

of the adoption by a biological parent. The governing statute does not expressly state that the one-year limit runs from the date a judgment of adoption is filed or from when the underlying judgment terminating parental rights exists.⁸¹ This confusion is due to the fact that during the adoption process, the biological parents may also be terminating their parental rights.⁸² The final judgment of terminating parental rights is currently not required to happen before the adoption process begins.⁸³ One solution to solve this confusion of when a parent can appeal the terminating of their parental rights is to make the terminating of the parental happen before the child is put up for adoption. If the adoption is due to child neglect or abandonment, place the child in foster care or with a court-appointed family guardian until parental right have been terminated. Then, once parental rights have been terminated, the child may be adopted by whoever the court determines to be suitable.

Another issue within the Florida Adoption Process is the preliminary and final home investigation. Currently Florida does not require a preliminary or final home investigation if the adoptee is being adopted by a stepparent or relative.⁸⁴ The court has to be the one to direct a Child-Placing Agent or Professional, only upon if good cause is shown.⁸⁵ This does not follow the underlying rule of “Best Interest of the Child.” The law assumes that because it is a relative or someone the mother or father choses to marry that the Prospective Adoptive Parent home does not need to be investigated. However, according to the National Association of Adult Survivors of Child Abuse, 68% of children abused in the United States are by family members and 90% are sexually abused by someone they knew.⁸⁶ Solution to this problem is to require a preliminary and final home investigation regardless of relation to the child. Every Prospective Adoptive should be investigated as well as their home.

⁸¹*Id.*

⁸²*Id.* § 63.087(3).

⁸³*Id.* § 63.087.

⁸⁴FLA. STAT. ANN. § 63.092(3) (2018); FLA. STAT. ANN. § 63.125(1) (2018).

⁸⁵FLA. STAT. ANN. § 63.125(1) (2018).

⁸⁶National Association of Adult Survivors of Child Abuse, *What are the Statistics of the Abused?* <http://www.naasca.org/2012-Resources/010812StaisticsOfChildAbuse.htm> (Last Visited Oct. 18, 2018).

III. INTERCOUNTRY ADOPTION: HAGUE CONVENTION COUNTRIES V. NON-HAGUE CONVENTION COUNTRIES

A. HISTORY OF THE HAGUE CONVENTION ON THE PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION

Intercountry adoption is a relatively new phenomenon, emerging only in the aftermath of the Second World War as a ‘humanitarian’ response and expanding dramatically in the 1970s, with few international safeguards in place until the advent of the 1993 Hague Convention.⁸⁷ The Hague Convention on the Protection of Children and Co-operation in Respect of Inter-Country Adoption (hereinafter referred to as The Hague Adoption Convention) is an international agreement to safeguard Intercountry adoptions.⁸⁸ The Hague Adoption Convention, the Convention established international standards of practices for Intercountry adoptions.⁸⁹ It is intended as a protection measure for when in-country care for a child, who cannot remain with his or her family, is not available. The Hague Adoption Convention is designed to promote the best interests of children, biological families, and adoptive families and to prevent the abduction, sale, and trafficking of children.⁹⁰ Intercountry adoption escalation has been so rapid and often uncontrolled, that countries of origin have been hard pressed to

⁸⁷Nigel Cantwell, *The Best Interests of the Child in Intercountry Adoption*, (Unicef Office of Research 2014) Pg. 26-27. (“The initial trans-Atlantic movement of children for adoption was supplemented and then overtaken by cross-border adoptions within Europe itself. In the mid-1950s, the focus in the USA moved to children affected by the Korean War, and particularly to stigmatized ‘Amerasian’ children fathered by US troops. This development spawned the first specialist private agencies that aimed to place children with foreign family agencies that were to become major fixtures in Intercountry adoption. International efforts to address the issues raised by Intercountry adoption in the 1960s focused on harmonizing laws, determining jurisdiction and ensuring that all parties recognized the adoption decisions that were made, in other words, the stuff of private international law. At the international level, these efforts shaped the first Hague Convention on Intercountry adoption in 1965”).

⁸⁸*Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption*, <https://www.hcch.net/en/instruments/conventions/full-text/?cid=69> (Last Visited Oct. 18, 2018)

⁸⁹*Id.*

⁹⁰*Hague Convention on Intercountry Adoption*, http://www.internationaladoptionhelp.com/international_adoption/international_adoption_hague_treaty.htm (Last Visited Oct. 18, 2018).

ensure that the best interests of the children concerned are being upheld.⁹¹ The Convention was not enforced in the United States until April 2008.⁹² As of June 2008, The Adoption Hague Convention is currently in force in 75 Countries.⁹³

The Hague Adoption Convention applies to all adoptions between the United States and the other countries that have joined it.⁹⁴ As increasing numbers of countries of origin have become parties to the 1993 Hague Convention and have implemented its provisions designed to protect children's best interests and human rights, adoptions from these countries have invariably declined.⁹⁵ This has led receiving countries to seek children for adoption from countries that are not bound by the standards set in the 1993 Hague Adoption Convention treaty.⁹⁶ Adopting a child from a Convention country is similar to adopting a child from a country not a part of the Convention, but there are some key differences.

B. PROCESS OF ADOPTING FROM A CONVENTION COUNTRY VERSUS A NON-CONVENTION COUNTRY

If Prospective Adoptive Parent adopts from a country where The Hague Adoptive Convention Treaty is enforced, your adoption

⁹¹*Id.*

⁹²Intercountry Adoption from Hague Convention and Non-Hague Convention Countries, <https://www.childwelfare.gov/pubPDFs/hague.pdf> (Last Visited Oct 18, 2018).

⁹³*Convention Countries.*, <https://travel.state.gov/content/adoptionsabroad/en/hagueconvention/convention-countries.html> (Last Visited Jan. 20, 2017). Countries The Hague Convention Treaty is enforced in: Albania, Andorra, Armenia, Australia, Austria, Azerbaijan, Belarus, Belgium, Belize, Bolivia, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Canada, Cape Verde, Chile, China (and Hong Kong), Colombia, Côte d'Ivoire, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Estonia, Fiji, Finland, France, Georgia, Germany, Greece, Guatemala, Guinea, Haiti, Hungary, Iceland, India, Ireland, Israel, Kazakhstan, Kenya, Latvia, Lesotho, Liechtenstein, Lithuania, Luxembourg, Macedonia, Madagascar, Mali, Malta, Mauritius, Mexico, Moldova, Monaco, Mongolia, Montenegro, Namibia, Netherlands, New Zealand, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Rwanda, San Marino, Senegal, Serbia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Swaziland, Sweden, Switzerland, Thailand, Togo, Turkey, United Kingdom, Uruguay, Venezuela, Vietnam, and Zambia.

⁹⁴*Understanding The Hague Convention*, <https://travel.state.gov/content/adoptionsabroad/en/hagueconvention/understanding-the-hague-convention.html> (Last Visited Oct. 18, 2018).

⁹⁵Cantwell, *supra* note 87, at 25.

⁹⁶*Id.*

has added requirements as well as additional protections.⁹⁷ One of the most important protections of The Hague Adoptive Convention Treaty is that your adoption agency or service provider must be accredited to conduct Intercountry adoptions.⁹⁸ The standards for accreditation ensures that your agency is qualified to provide services.⁹⁹ The Department of State has designated two accrediting entities to perform the accreditation functions: (1) the Council on Accreditation and (2) the Colorado Department of Human Services.¹⁰⁰ The Hague Adoptive Convention treaty requires that a Prospective Adoptive Parent participate in at least ten hours of pre-adoption training before traveling overseas to complete an adoption.¹⁰¹ Prospective Adoptive Parent(s) must complete a home study as well, the home study it must meet State and Federal

⁹⁷*Hague Convention on Intercountry Adoption*, http://www.internationaladoptionhelp.com/international_adoption/international_adoption_hague_treaty.htm (Last Visited Oct 18, 2018).

⁹⁸*Id.*

⁹⁹*Id.*

¹⁰⁰Elec. Code of Fed. Regulations §96.5 (2017) http://www.ecfr.gov/cgi-bin/textidx?SID=d63d1415f686c1206240e0c7668b831d&mc=true&node=se22.1.96_15&rgn=div8; *Hague Accreditation and Approval*, <http://coanet.org/accreditation/hague-accreditation-and-approval/> (Last Visited Oct 18, 2018). An accrediting entity must qualify as either: (a) An organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended, that has expertise in developing and administering standards for entities providing child welfare services; or (b) A public entity (other than a Federal entity), including, but not limited to, any State or local government or governmental unit or any political subdivision, agency, or instrumentality thereof, that is responsible for licensing adoption agencies in a State and that has expertise in developing and administering standards for entities providing child welfare services. As a process, accreditation involves a formal evaluation of an agency's compliance with the standards which includes close examination of the agency's documents and verification of compliance during a site visit at the agency's offices.

¹⁰¹Cantwell, *supra* note 87 (“All adoptive families should receive training in the following core areas: (1) the legal and social process of adoption in the country of origin and the receiving country (2) issues of abandonment, separation, grief, loss and mourning; understanding that the psychological consequences for the child might occur only later, when parents think such issues have been resolved (3) the adoptive family life cycle and unique issues in adoptive family formation (4) unique issues of identity, which vary according to the age and developmental stage of the adopted child (5) culture and ethnicity (6) attachment in adoption, including methods to promote attachment at an early stage (7) outcomes and risks in intercountry adoptions, focusing on the health, development, behavioral and educational needs that may be experienced by children (8) dealing with unresolved infertility issues (if applicable) • resources for a single adoptive parent (if applicable) (9) the short and long-term effects of neglect, abuse and trauma experienced by the child before adoption”).

requirements.¹⁰² The home study is also to be prepared by an accredited agency, supervised provider or exempted provider.¹⁰³

Additionally, the country of which the child will be adopted to must find the child adoptable as a convention adoptee.¹⁰⁴ This is done through the country, the child will be living in after adoption, immigration laws.¹⁰⁵

The process for adopting a child from a non-Convention country differs in many key ways from adopting from a Convention country. The first step in adopting a child from Korea is usually to select an agency or attorney in the United States that can help the Prospective Adoptive Parent(s) with the adoption.¹⁰⁶ At a minimum they will need the services of someone licensed or authorized to perform a home study for their state of residence.¹⁰⁷ Choosing a qualified adoption service provider is a very important part of the adoption process.¹⁰⁸ Adoption service providers must be licensed by the U.S. state in which they operate.¹⁰⁹ As for the requirement of participating in pre-adoption training before traveling overseas to

¹⁰²*Intercountry Adoption From A to Z*, https://travel.state.gov/content/dam/aa/pdfs/Intercountry_Adoption_From_A_Z.pdf (Last Visited Jan 21, 2017).

¹⁰³*Guidance on Supervising Foreign Providers*, <https://travel.state.gov/content/travel/en/Intercountry-Adoption/adoptionprofessionals/For-Adoption-agencies/guidance-on-supervising-foreign-providers.html> (Last Visited Oct. 19, 2018) (“Accredited agency: is an adoption service provider who has been accredited by either the Council on Accreditation (COA) or the Colorado Department of Human Services (CO) to provide adoption services in the United States for cases subject to the regulations set forth by The Hague Adoption Convention. Supervised Provider: any agency, person, or other non-governmental entity, including any foreign entity, that is providing one or more adoption services in a Convention case under the supervision and responsibility of an accredited agency, temporarily accredited agency, or approved person that is acting as the primary provider in the case Exempted Provider: Social work professionals or organizations that perform home studies on prospective adoptive parents”).

¹⁰⁴*Hague Adoption Process*, <https://travel.state.gov/content/adoptionabroad/en/adoptionprocess/glossary.html> (Last Visited Oct 19, 2018) (“The Country of Origin is the country in which a child is a legal resident and will be emigrating from in conjunction with an adoption case”).

¹⁰⁵*Id.*

¹⁰⁶*Non-Hague Adoption Process*, <https://travel.state.gov/content/adoptionabroad/en/adoption-process/how-to-adopt/non-hague-adoption-process.html> (Last Visited Oct 19, 2016).

¹⁰⁷*Id.*

¹⁰⁸*Id.*

¹⁰⁹*Id.*

complete adoption, that is determinative of the state where the Prospective Adoptive Parents reside.¹¹⁰

To adopt a child from another country and bring that child to live in the United States, the child must be found eligible to adopt under U.S. law.¹¹¹ The Federal agency that makes this determination is U.S. Citizenship and Immigration Services (hereinafter referred to as USCIS).¹¹² Korea allows the parent during the Placement supervision choose the physician that checks the child out and take pictures of the child to report to the Agency as part of the Final home investigation before the Adoption is finalized. The parent is given the option between 6 to 12 months of the Placement Agreement to decide if they would desire to adopt the child. If not, they may “return the child to Agency at any time they desire to do so with or without adequate reason before the adoption is completed and that they will not retain physical possession of the child after making a decision that they do not wish to adopt the child.”¹¹³

C. PROBLEMS IN THE INTERCOUNTRY ADOPTION PROCESS

Some major problems with Intercountry Adoption with Korea are potential hidden fees, delays while in-country, death of records, and lack of oversight by federal and uniform regulations.¹¹⁴ This is because Non-Convention Countries are not required to do itemize adoption fees for the initial contract, provide medical records of the child, or any other records of previous adoptions.¹¹⁵ Easy solution to these problems would be to have the U.S. only do Intercountry Adoption with Convention Countries, thus requiring countries to become a part of the Hague Convention. However, Non-Convention Countries do not want to join the convention, even though there are these problems. This is because once a country of origin becomes a party to The Hague Convention, it usually applies the subsidiarity rule and other safeguards more strictly and adoption rates drop drastically.¹¹⁶

¹¹⁰*Id.*

¹¹¹*Id.*

¹¹²*Id.*

¹¹³2-7 Adoption Law and Practice § 7.05 (2015).

¹¹⁴*Hague vs. Non-Hague Country Adoptions*, NAT'L COUNCIL FOR ADOPTION, <https://adoptioncouncil.org/files/large/59f7380ef3f5f17> (Last visited Oct. 19, 2018).

¹¹⁵*Id.*

¹¹⁶*Id.* at 2-3

Another solution to the problems with adoptions from countries that are not a part of The Hague Convention is for the country adopting the child to set those laws for all of their adoptions from other countries. Requiring specific documentations of the child before approving the Immigration status that is necessary for the child to be allowed to live in their country. At minimum those documents should consist of all medical documents necessary for diagnosing of any mental physical and/or behavioral issues and documents pertaining to any previous adoptions. If possible the documents pertaining previous adoptions should have reasoning of the previous Prospective Adoptive Parent returning the child. These documents should be given to the last Prospective Adoptive Parent once they have made the decision to possibly adopt this child. This would help with either the Prospective Adoptive Parent and the child from forming an unnecessary bond if the Prospective Adoptive Parents decide that child's mental, health and/or behavioral issues are a deal breaker.

Another problem with Intercountry Adoptions with a Non-Convention Country is a deliberate shift away from countries where the best interest of the adoptee child and Prospective Adoptive Parent would be better protected under the 1993 Hague Convention. Intercountry Adoption is now shifting to countries where the kind of guarantees afforded by the treaty may well be absent where experience and adequate resources are lacking.¹¹⁷ Also, the year-on-year increase in the volume of adoptions from a Non-Convention Country may be so rapid that it defies any real attempt to ensure case-by-case verification of the child's circumstances by the competent authorities.¹¹⁸ Another problem consists of US agencies that are not accredited under the US system can still deal with Intercountry adoptions from Non-Convention Countries, such as Ethiopia, as long as they are 'approved' to work there by the government of that country.¹¹⁹ In contrast, countries like Italy and Sweden, prohibit any non-accredited agency from processing any adoption from any country.¹²⁰ While one would think the easy

For instance, for the Home Study for a Convention country, a more thorough background check may preclude couples from adoption for misdemeanors, mental or physical health. Certain countries may require additional medical information, such as china requires a certain BMI to be eligible as a Prospective Adoptive Parent

¹¹⁷Cantwell, *supra* note 87, at 43.

¹¹⁸*Id.*

¹¹⁹*Id.*

¹²⁰*Id.*

solution is for any agencies that want to deal with Intercountry be accredited in both the US and the country of which they are adopting from. However, the economic and international law issues of this proposal make it not an easy fix.

IV. SOLUTIONS TO FUTURE PROBLEMS OF INTERCOUNTRY ADOPTION BETWEEN FLORIDA AND KOREA IN RESPECT TO THE PLACEMENT AGREEMENT AND THE FINALIZING OF THE ADOPTION

Having a child fly from across the country, only for the possibility of their Prospective Adoptive Parent to be able to ship the child back without any just cause or explanation, is that in the best interest of the child? That is a possible problem in respect to Intercountry Adoption between, a Non-Convention Country, Korea and Florida. The notion of best interests pre-dates the development of internationally accepted human rights.¹²¹ It has invariably been used as the basis for decisions about people deemed incapable of making rational decisions for themselves, as well as for actions intended to help them protect themselves or improve their lives. Mentally disable persons and children have been the main groups to be dealt with in this way.¹²²

The children most often placed for Intercountry adoption are likely to be very young, and any expectation that they will fully understand what is happening to them or be able to share an informed opinion about it is, at best, unrealistic, even with the involvement of highly skilled practitioners. The age at which a child must be consulted about, or give their consent to, Intercountry adoption varies from country to country, however it is usually 10 and older.¹²³ There is no research, however, about the extent to which children of any age can grasp the various implications of adoption, and particularly of being adopted abroad. As a result, the principle that the child's opinion should form the process around a determination of best interests may be very hard to apply in Intercountry adoption.¹²⁴

¹²¹*Id.*

¹²²*Id.*

¹²³United Nations Population Division Adoption, *Trends and Policies, Department of Economic and Social Affairs*, pp. 43–44. (2014).

¹²⁴Cantwell, *supra* note 87, at 19

The current regulation for Non-Convention countries home studies are that Parents may have a home study conducted by any adoption provider licensed in their State before they decide from which country they are likely to adopt from.¹²⁵ The home study must meet the requirements of USCIS.¹²⁶ Allowing the parent to decide an adoption provider of their choosing can cause Prospective Adoptive Parents to manipulate the system. The home studies should be on the responsibility of the Agency. An agency that processes adoption between the United States and a Non-Convention country should be required to find a suitable adoption provider in the State of the Prospective Adoptive Parent state and report to USCIS. This would allow the foreign agency to truly see how the living conditions of the Prospective Adoptive Parent(s) are and if the Agency is illegally processing the home study, USCIS can prosecute the Agency.

Currently in Korea, the Placement agreement allows the adoptee to be placed with the Prospective Adoptive Parent before the adoption is completed. Although the placement agreement states that the Korean Agency will supervise the child and remain a guardian, it is up to the parent to provide the agency with the supervised information.¹²⁷ The supervised information should not be at the discretion of the Parent. This part of the adoption process of an Intercountry Adoption with Non-Convention country should be done to the standard of the state where the Prospective Adoptive Parents reside. Also, require that the Non-Convention Country have a sister agency in the United States to perform a thorough investigation of the Prospective Adoptive Parents.

For instance, if parents from Florida wants to adopt a child from Korea, the Korean Agency would need to follow the Adoption procedures of Florida for the finalization of the Adoption as it pertains to the Placement Agreement. This would require that the Korean Agency have a sister agency set up in the U.S. That Korean sister agency would have to meet all the requirements to be able to process an Intercountry adoption with Florida and Korea. The sister agency in the US would report to USCIC and could have guardianship over the child until the adoption is finalized. Currently in Florida the Prospective Adoptive Parent creates a bond with the

¹²⁵*Intercountry Adoption from Hague Convention and Non-Hague Convention Countries*, <https://www.childwelfare.gov/pubPDFs/hague.pdf> (Last Visited Oct. 19, 2018).

¹²⁶See Hague Adoption Process, *supra* note 104.

¹²⁷2-7 Adoption Law and Practice § 7.05 (2015).

child before the child is placed in Prospective Adoptive Parent home. With having a Korean sister country in Florida, would allow the child and the Prospective Adoptive Parents to get to know one another as well for them to do it in a supervised and regulated manner. If it is decided that the adoption is not in the best interest of the child or the parent, the child would not be being shipped back to a country. The Korean sister agency could possibly keep the child for a designated amount of time if they have another family that may adopt the child.

The Korean sister agency would also be the one required to do the final home investigation. Therefore, with this process, Korea should no longer be allowed to have a child be shipped back without just cause. If it were determined that the child was in a stable environment and the Prospective Adoptive Parent could care for the child, then for any just cause to rescind the adoption, the parent would need to go through the Florida Courts.

This would make sure that another Justin Hansen tragedy never happens again. Children are not perishable goods. Just as if you were to birth a child with certain mental disabilities, there are laws in place to make sure you do not just discard of the child as you please. The same laws should be put in place for Adoptive parents that adopt children internationally. Just as a Prospective Adoptive Parent is excited to finally have a child they can call their home, an adoptee is excited to have a family they can call their own. No child should feel as if they are merchandise to where if they do not perform according to the Prospective Adoptive Parents expectation then they will be returned back to sender.