

2. Proposal E

Legislative Bill: Proposal E

Amend G.S. § 48-2-301 to allow joint re-adoption of a child adopted in a foreign country notwithstanding that the child's adoptive parents have divorced.

G.S. § 48-2-301 Petition for adoption; who may file.

(a) A prospective adoptive parent may file a petition for adoption pursuant to Article 3 of this Chapter only if a minor has been placed with the prospective adoptive parent pursuant to Part 2 of Article 3 of this Chapter unless the requirement of placement is waived by the court for cause.

(b) Except as authorized by Articles 4 and 6 of this Chapter, the spouse of a petitioner must join in the petition, unless the spouse has been declared incompetent or unless this requirement is otherwise waived by the court for cause.

(c) If the individual who files the petition is unmarried, no other individual may join in the petition, except that a man and woman who adopted a minor child in a foreign country while they were married to one another may file jointly for readoption as provided in this Chapter notwithstanding that they have since divorced.

Detailed Analysis: Proposal E

Amend G.S. § 48-2-301 to allow joint re-adoption of a child adopted in a foreign country notwithstanding that the child's adoptive parents have divorced.

E-1. Need or Condition Addressed. Some married parents who adopt a child in a foreign county are required by federal law to re-adopt under state law in order to qualify their child for automatic US citizenship.⁸ However, if the parents divorce before re-adopting the child, under current law the parents cannot re-adopt jointly. This will prevent the adopted child from obtaining automatic US citizenship.

Under Section 320(a) of the Immigration and Nationality Act, a child born outside of the United States automatically becomes a citizen of the United States when: at least one parent is a US

⁸ The full texts of the Immigration and Nationality Act, UCCIS regulations and other immigration legal resources cited here can be reviewed at www.uscis.gov

citizen, the child is under the age of eighteen, and the child is residing in the US in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.⁹

Section 320(b) of the Immigration and Nationality Act states that the foregoing rule applies to “adopted” children.

Under USCIS regulations, “‘adopted’ means adopted pursuant to a full, final and complete adoption. If . . . the unmarried U.S. citizen parent or U.S. citizen parent and spouse jointly did not see and observe the child in person prior to or during the foreign adoption proceedings, the child is not considered to have been fully, finally and completely adopted and must be re-adopted in the United States.”¹⁰

Many foreign adoptions have been completed in which only one of the two married adopting parents saw the child in person prior to or during the foreign adoption. These adopted children are lawful permanent residents of the United States. However, they do not become U.S. citizens unless and until they are re-adopted before they become 18 years old.

North Carolina law provides for the re-adoption of these children. Re-adoption is essentially a formal recognition of the child’s foreign adoption. Under G.S. § 48-2-205, “Recognition of adoption decrees from other jurisdictions,” “the adoption order entered in the foreign country may be accepted in lieu of the consent of the biological parent or parents or the guardian of the child to the re-adoption.”

Adoptive parents of a foreign-born child who divorce prior to re-adopting cannot currently re-adopt because of G.S. § 48-2-301(c) which states “if the individual who files the petition is unmarried, no other individual may join in the petition.”

E-2. How the Law would be Revised and Improved. The proposed amendment would provide that persons who adopted a child in a foreign country while they were married would have standing to jointly re-adopt the child in North Carolina notwithstanding that they have since divorced.

E-3. Constitutional Problems. None known.

E-4. Previous Association Position. None.

E-5. Impact on Other Areas of Law. None known.

⁹ 8 U.S.C. 1431.

¹⁰ 8 C.F.R. § 320.1.

E-6. Drafters. See Schedule A attached.

E-7. Other Interested Groups. The American Immigration Lawyers Association, the American Academy of Adoption Attorneys, adoption agencies licensed by the State of North Carolina, and the NC Department of Health and Human Services are expected to express support for this proposal if asked.

Talking Points: Proposal E

Amend G.S. § 48-2-301 to allow joint re-adoption of a child adopted in a foreign country notwithstanding that the child's adoptive parents have divorced.

- This amendment is intended to help people who have adopted overseas insure that their children will qualify for American citizenship if the adoptive parents divorce before re-adopting their child as required by U.S. immigration law.

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