The New Chinese Export: Orphaned Children--An Overview of Adopting Children From China

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The New Chinese Export: Orphaned Children—An Overview of Adopting Children From China

Robert S. Gordon*

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* J.D., McGeorge School of Law, University of the Pacific, to be conferred 1998; B.A., Political Science, Brigham Young University, 1992. I would like to thank my wife, Colleen, for providing me with such a fascinating topic. In addition, I would like to thank my parents for their endless support. I am also grateful to all the editors who helped make this Comment possible.

It is my hope that this Comment will make the Chinese adoption process easier to understand so that the never-ending supply of infants in China can find their way into caring homes.
I. INTRODUCTION

People unable to have children, or families simply seeking to increase in numbers, are facing greater difficulties in the U.S. adoption market. Adoptions in the United States have become subject to public scrutiny since the much publicized Baby Richard and Baby Jessica cases where the biological parents were restored custody of their children after having placed them for adoption several years previously. Frustrated families wanting to adopt are beginning to see that the grass may truly be greener on the other side of the fence, even if that fence is a national boundary half way around the world.

International adoptions are on the rise. Single-race families in the United States are beginning to merge with the cultures of the world. Russia, Romania, Korea, and Ecuador are just a few of the countries where U.S. citizens seek children to adopt. The People's Republic of China (China), the most populous country in the world, is now reshaping international adoptions. China has emerged as the largest supplier of children to U.S. families seeking to adopt.

This Comment focuses on why China has become the main supplier of children in international adoptions and how the practicing attorney can better serve prospective adoptive parents. Legal practitioners are provided with an in-depth look at the foreign adoption process in China. Although attorneys have traditionally had specific roles in U.S. domestic adoptions, the role of an attorney in an international

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1. See infra notes 64-69 and accompanying text (discussing increased barriers to successful U.S. domestic adoptions).
2. 638 N.E. 2d 181 (Ill. 1994)
4. See Mike Austin, Increasingly, Adoption Hunt Taking Lawyers and Parents Far Afield, CHI. DAILY L. BULL., May 9, 1996, at 2 (explaining recent case decisions which might worry prospective adoptive parents). In 1993, the U.S. Supreme Court ordered a Michigan couple to return their two and a half year old adopted daughter, Jessica, to her biological parents in Iowa. Id. The following year, the Illinois Supreme Court ordered the return of "Baby Richard" to his biological father after having been with his adoptive parents for over four years. Id.
8. See infra notes 212-16 and accompanying text (citing adoption statistics from China and U.S. immigration).
9. See infra notes 135-52 and accompanying text (explaining the various responsibilities of an attorney assisting in an international adoption).
adoption is still being defined. This Comment suggests ways in which an attorney can resolve legal concerns surrounding not only the adoption law in China, but also the complexities of federal and state law in the United States. Prospective parents must not only comply with U.S. adoption laws, but they must also follow the adoption laws of the foreign country where their child was born. In most instances, the attorney will provide legal advice and counsel regarding the adoption of a child from China. Other attorneys may be asked to become more involved with the process and actually take part in the adoption transaction from start to finish. Attorneys not specialized in international adoptions can still help clients meet state adoption requirements and assist with the procedures required by the U.S. Immigration and Naturalization Service (INS).

Part II of this comment discusses the history of international adoptions and how U.S. families became interested in adopting overseas. The Hague Conference’s Convention in Respect of Intercountry Adoption is critiqued, and the role of the United States in the international adoption arena is discussed. Part III analyzes the China Adoption Law and the reasoning behind its regulations and procedures along with the 1993 revisions to the law. Part IV focuses on completing the adoption process in the United States once the Chinese child has been secured for adoption in China. Finally, Part V summarizes the benefits of adopting a child from China.

10. See generally Lynn Smith, A World of Hope, L.A. TIMES, June 18, 1996, at E1 (expressing concerns about the legal implications surrounding the new realm of international adoptions). Attorneys who assist in the process will have to learn about everything from diseases to foreign residency requirements (if any), and understand the forms that accompany each transaction. Id.; see Richard R. Carlson, Transnational Adoption of Children, 23 TULSA L.J. 317, 376 (1988) (suggesting that international adoptions can raise legal issues and problems that are virtually unheard of in the U.S. domestic adoption process).
11. Cossack, supra note 5.
12. See generally Stephanie Saul, Broken Dreams: In Some Foreign Adoptions, Hope Fades to Hard Reality, NEWSDAY, Jan. 2, 1997, at A5 (expressing frustration felt by parents who were not properly advised and instructed on the possible complications and difficulties with international adoptions). Attorneys will want to explore all the possible effects of adopting overseas including social perceptions and adaptability issues. Id.
13. See infra notes 135-52 and accompanying text (discussing various ways an attorney can be involved in the international adoption process).
14. Austin, supra note 4, at 2. Attorneys not familiar with immigration law are warned not to dabble in the law. Id. Although the law is written down and may be looked up, it is difficult to understand without any experience in the field. Id.
15. See infra notes 20-28 and accompanying text (discussing the origins of U.S. interests in adopting overseas).
16. See infra notes 29-54 and accompanying text (examining the most influential international treaty regarding international adoption of children).
17. See infra notes 83-214 and accompanying text (analyzing China’s adoption law and how a practitioner can assist clients in understanding how the system works).
19. See infra notes 254-63 and accompanying text (concluding that China has the most efficient and workable adoption law pertaining to foreigners).
II. OVERVIEW OF INTERNATIONAL ADOPTIONS

Prior to World War II, U.S. families wanting to adopt children rarely looked beyond the borders of the United States. International adoptions were not pursued due to the surplus of available domestic children. This abundant supply of domestic children steadily declined after World War II. Shortly thereafter, U.S. families seeking to adopt began benefitting from wartime humanitarian programs which located homes in the United States for orphaned children from war-torn European countries. In the 1950s, U.S. military interests switched to Asia as a result of the Korean War, and exposed a new corner of the world for parents wishing to adopt foreign children.

The end of the Korean War ushered in a wave of international adoptions as U.S. interests gradually shifted to Asia as a resource of children available for adoption. South Korea quickly became the world's largest exporter of children and dominated the international adoption market through the late 1980s. Since the first international adoptions following World War II, more than 130,000 orphaned children from around the world, comprised largely of orphans from Korea, have been adopted by U.S. families. As the popularity of international adoptions grew in the United

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21. See id. at 284 (describing the American attitude of adoption in general).
22. See generally id. at 287 (recognizing the societal changes in the United States which impacted the birth rate, and thus the number of children available for adoption, i.e. contraception and the acceptance of the single-parent home); Michael S. Serrill, *Going Abroad to Find a Baby*, TIME, Oct. 21, 1991 at 86 (comparing adoption statistics in the United States). In 1966, 65% of Caucasian single mothers put their child up for adoption, but in 1986 the percentage of Caucasian mothers putting their child up for adoption dropped to five percent. Id. See also Anthony, supra note 6 (describing the influx in international adoptions after World War II from European countries).
23. See generally Katz, supra note 20, at 286 (detailing efforts of foreign countries to help assist occupied nations such as Germany, Japan, Italy, and Greece manage their increasing number of orphaned children).
24. See generally Anthony, supra note 6 (noting that although U.S. families did adopt children from Asia after WWII, it wasn't until the United States became involved with the Korean War that families began to take advantage of the Asian orphan market).
25. See Margaret Liu, *International Adoptions: An Overview*, 8 TEMP. INT'L & COMP. L.J. 187, 192 (1994) (recognizing the end of the Korean War as the time when international adoptions seized widespread attention in the United States). Since many U.S. military personnel were stationed in Asian countries they were regularly exposed to homeless children. Id. The increase in adoptions from Asia was fostered by the South Korean government's willingness to grant such adoptions. Id.
26. See Anthony, supra note 6 (estimating that since the Korean War, more than 100,000 Korean children have entered the United States through adoption.) The number of children adopted from Korea peaked at 10,97 in 1987. Id. The decline since 1987 is attributed to the Korean government's tightened policies regarding foreign adoptions. Id. See also Couples Can Look to the East for Quicker Route to Adoption, HOUS. POST, July 3, 1994, at E1 (hereinafter Couples Can Look to the East] (claiming that the decline was linked to the legalization of abortion and also as a response to accusations by North Korea that South Korea had been selling babies to foreigners).
27. See generally Carlson, supra note 10, at 318-31 (outlining the wave of international adoptions since the end of the Korean War). It was also the influx of adopted Korean children that helped break down social and political taboos surrounding interracial families. Id. at 328.
States, the number of private adoption agencies and attorneys facilitating the new baby boom exploded.28

A. The Hague Convention in Respect of Intercountry Adoption

International organizations have focused great attention on the rising interest in international adoptions.29 In 1993, the Hague Conference on Private International Law30 proposed a multilateral treaty aimed at protecting the rights of internationally adopted children.31 This multinational treaty, referred to as the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Convention), received unanimous approval from all national delegations, including both China and the United States.32 The Hague Convention creates a coordinating system for international adoptions but does not attempt to standardize adoption laws for the participating countries.33 The Hague Convention simply attempts to break down the complex barriers traditionally surrounding international adoptions.34

The main objectives of the Hague Convention are threefold: 1) to ensure an international adoption occurs only if it is in the child’s best interest; 2) to establish a system of cooperation among participating nations in order to assure their agreements are upheld, as well as to help curtail the sale of children; and 3) to ensure recognition of intercountry adoptions which conform with the Hague Convention’s requirements.35 To secure these objectives, the Hague Convention calls for the regulation of the international adoption trade by a Central Authority to act as an

28. See generally Kristina Wilken, Controlling Improper Financial Gain in International Adoptions, 2 DUKE J. GENDER L. & POL’Y 85, 86 (1995) (suggesting the increase in foreign adopted children entering the United States has spawned a high demand for intermediaries to facilitate the adoption process).


30. Katz, supra note 20, at 283-84. The Hague Conference on Private International Law is a non-U.N. based intergovernmental organization, whose main purpose is to establish unified guidelines for the practice of private international law. Id.


34. See generally Katz, supra note 20, at 287-90 (1995) (reviewing the prior global attempts to unify international adoption policies and procedures which typically involved different classifications for categorizing adoptable children, and varying requirements for parental fitness).

35. Hague Conference, art. 1, supra note 31, at 1135. See generally Katz, supra note 20, at 307 (describing the Hague Conference procedures that must be followed during the adoption if the prospective parents reside in a contracting state, and the child also lives in a contracting state). A contracting state is any member state that has ratified the treaty. Id.
administrative body in each participating state in conformance with the Requirements for Intercountry Adoptions as outlined in Articles four through six.\textsuperscript{36}

Under the Requirements for Intercountry Adoptions, an international adoption may occur only after the Central Authority within the state of origin has determined the child is suitable for adoption, consent has been freely given by the biological parents, and such consent is not the result of payment or compensation of any kind.\textsuperscript{37} The Central Authority in the receiving state must also determine that the prospective adoptive parents are suitable and eligible to adopt, and that proper authorization has been granted for the child to enter and permanently reside in the receiving state.\textsuperscript{38}

Throughout the treaty there is tremendous emphasis on the role of the Central Authorities in bringing to pass the goals of the Hague Convention. Added stress is placed upon curtailing the sale of children and the accompanying improper financial gain reaped by the adoption agencies, agents and attorneys.\textsuperscript{39} Although the United States is a signatory\textsuperscript{40} to the Hague Convention, it faces difficulties in the ratification process.\textsuperscript{41} One concern is U.S. law does not conform with the treaty's prohibition against improper financial gain "in connection with an adoption"\textsuperscript{42} or "from an activity related to an intercountry adoption."\textsuperscript{43}

If adoptive parents are able to show the INS that the Chinese infant will go to a nurturing home, the U.S. immigration officials will ignore any payments made to acquire the baby.\textsuperscript{44} Although most states have statutes prohibiting the sale of adopted children, these state laws may not pertain to international adoptions.\textsuperscript{45} For the United States to more completely conform with the Hague Convention's standards, it must define "improper financial gain" and establish monitoring procedures to prevent this type of illegal profit.\textsuperscript{46} Under the Hague Convention it is the responsibility of the United States, and each member state, to monitor conformance with the treaty by its

\begin{itemize}
\item \textsuperscript{36} Hague Conference, art. 4-6, \textit{supra} note 31, at 1139-40.
\item \textsuperscript{37} \textit{Id.} art. 4(c)(2)-(3), at 1140.
\item \textsuperscript{38} \textit{Id.} art. 5(a), (c).
\item \textsuperscript{39} \textit{Id.} arts. 1(b), 4(c)-(d), 8, 11(a), at 1139-40.
\item \textsuperscript{40} The United States became a signatory to the Hague Conference on 4 July 1993. Wilken, \textit{supra} note 28, at 87. As of 23 January 1997, the treaty had not been introduced into the Senate for ratification. United States Department of State, Office of Treaty Affairs, (202) 647-1345.
\item \textsuperscript{41} \textit{See} Smith, \textit{supra} note 10 (describing the differing concerns among U.S. lawmakers about whether the treaty should be ratified). Much of the antagonism is related to who will be responsible for controlling adoptions if and when the treaty is ratified. \textit{Id.}
\item \textsuperscript{42} Hague Conference, art 8, \textit{supra} note 31, at 1140.
\item \textsuperscript{43} \textit{Id.} art 32, at 1143.
\item \textsuperscript{44} \textit{See} Wilken, \textit{supra} note 28, at 93-95 (criticizing how intermediaries are able to demand money from desperate parents and how the U.S. immigration officials ignore the payments). The INS usually only investigates suspected cases of outright fraud and instances when the child is not actually delivered. \textit{Id.} at 94.
\item \textsuperscript{45} \textit{See id.} at 91 (expressing ambiguity as to whether state laws forbid the sale of international children).
\item \textsuperscript{46} \textit{See id.} at 94 (recommending the U.S. define the term "improper financial gain"); \textit{see also} Holly C. Kennard, \textit{Curtailing the Sale and Trafficking of Children: A Discussion of the Hague Convention in Respect of Intercountry Adoptions}, 14 \textit{PA. J. INT'L BUS. L.} 623, 644 (1994) (criticizing the Hague Convention for failing to define the term "improper financial gain" within the text of the treaty).
\end{itemize}

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own nationals since the Hague Convention has not established enforcement mechanisms or a process of appellate review.47

Another difficulty with U.S. ratification of the Hague Convention is the notion that the federal supremacy given the Hague Convention would preempt a state court's judgment to review the adoptability issue.48 State courts and legislatures have often resisted the idea that they should rely upon the conclusions of a foreign court.49

The Hague Convention is the first significant treaty to address the volatile world of international adoptions.50 However, despite the Hague Convention's efforts to monitor international adoptions, the United States is not the only signatory that has concerns about ratifying the treaty.51 Out of sixty-six countries which participated in the 1993 Hague Convention on Intercountry Adoption, only ten states have ratified it.52 Although the United States has not ratified the Hague Convention and therefore is not required to adhere to the Hague Convention's provisions, the Hague Convention does provide a framework for the United States to work within.53 As the world's largest receiving country of internationally adopted children, the United States may soon be forced to accept the guidelines outlined in the Hague Convention and ratify the treaty in order to maintain its leading position.54

B. International Adoptions in the United States

Despite the guidelines set up under the Hague Convention and the growing international adoption market, domestic adoptions still greatly outnumber international adoptions in the United States.55 One reason is international adoptions have typically

47. See Lippold, supra note 5, at 497 (attributing the lack of any enforcement mechanisms as the main problem with the Convention since individual nation states will be responsible for carrying out the treaty's provisions).
48. The Hague Conference does not impose the most rigorous standards upon international adoptions, it simply establishes important minimum standards. Carlson, supra note 32, at 252.
49. If the Hague Conference is ratified, the State courts would be forced to rely upon the decision by the foreign magistrate. Id.
50. See id. at 247 (holding the Convention to be the first significant treaty to effectively deal with international adoption on a global scale).
51. See Smith, supra note 10 (citing that not all participants to the Convention have ratified the treaty).
52. Id.
53. See generally Romano, supra note 29, at 572-80 (discussing the purpose of the Convention and its bearing upon the United States).
54. See Smith, supra note 10 (claiming that if the U.S. does not ratify the treaty, many sending countries may choose to place their children with other countries who are bound by the treaty); see also Lippold, supra note 5, at 499 (insisting if the U.S. does not ratify the Convention, the treaty itself may prevent U.S. parents from adopting children from other contracting states).
55. Kristina Sauerwein, Stricter Adoption Laws Benefit Children, Experts Say, ST. LOUIS POST-DISPATCH, Dec. 8, 1996. U.S. parents adopted about 52,000 U.S. children in 1995 as compared with 9,679 international adoptions. Id. See also Silver, supra note 6 (providing statistics from 1991 that estimate that out of 400,000 U.S. children in foster care, only 36,000 are free for adoption). The comparatively small number of available children is attributed to the fact that biological parents of foster children have not signed away their legal rights. Id.
been cumbersome and time consuming for prospective parents. Individuals and couples seeking to adopt internationally usually must travel to the foreign country and deal with the foreign country's administrative and legal systems. Many U.S. citizens choosing to adopt overseas are often required to adopt either physically disabled children or infants with other serious medical problems. As an example, children adopted abroad are one thousand times more likely to carry tuberculosis than children born in the United States. A growing number of children adopted from Russia are afflicted with fetal alcohol syndrome. Children from Romania are forty to fifty times more likely to carry hepatitis B. However, notwithstanding the possible health risks associated with international adoptions, many U.S. families seeking to adopt are forced to go overseas.

An increasing number of families resort to international adoption based on the continuing decrease in available U.S. children and the ill-perceived practice of domestic adoption in the United States. In the United States, the domestic adoption

56. See generally Adoption Rules in Nations Where Americans Adopt Most Often, AP, Jan. 11, 1993, A.M. cycle [hereinafter Adoption Rules] (explaining the various procedures required by such countries as Romania, Russia, Chile, Guatemala, Peru, Poland, and the Philippines); Ina Kitchen, Long Journey, Happy Ending: Adopting a Foreign Child, BUS. WK., June 12, 1995, at 102 (outlining the process of finding a child in such countries as Ecuador, India, Korea, and Russia); Carroll Bogert, et al., Bringing Back Baby; Family: In Foreign Adoption, the Rules and Risks are Changing Faster Than Ever, NEWSWEEK, Nov. 21, 1994, at 78 (recounting an experience of a family that adopted a child from Peru which took 18 months and cost the family $60,000).

57. See Wall Howard Phoebe, Adoption Firm Has New Emphasis, THE DES MOINES REG., Oct. 11, 1994 (stating that those wishing to adopt in Bolivia must spend up to three weeks in the country before an adoption can take place); see also Adoption Rules, supra note 56 (describing regulations in Chile where parents must go to Chile and hire either a local attorney or work through the government adoption agency in order to successfully complete an adoption).

58. In Russia, foreigners may only legally adopt children classified as handicapped, children with a history of family illness, or children from a mixed race background. Adoption Rules, supra note 56. Children available for adoption in the Philippines either have physical or mental disabilities. Id. Bogert et al., supra note 56.

59. A specific disease which may affect almost any tissue or organ of the body, but usually attacks the lungs and can be fatal if not treated. STEDMAN'S MEDICAL DICTIONARY 1867 (Williams & Wilkins 26th ed. 1995).

60. Bogert et al., supra note 56.

61. See Saul, supra note 12 (describing how children from Latin America and Asia are less likely than children from Russia to show signs of fetal alcohol syndrome); see also Bogert et al., supra note 56 (comparing health risks between domestic U.S. adoptions and international adoptions, and the chance the child could have signs of fetal alcohol syndrome). Fetal alcohol syndrome is defined as malformation defects of the fetus caused by mothers who are chronic alcoholics. STEDMAN'S MEDICAL DICTIONARY, supra note 59, at 1729. Mental retardation is often demonstrated later in life as a result of fetal alcohol syndrome. Id.

62. Bogert et al., supra note 56. Hepatitis B is a viral liver disorder, and is the leading cause of chronic liver disease and cirrhosis. STEDMAN'S MEDICAL DICTIONARY, supra note 59, at 784-5.

63. See Serrill, supra note 22 (attributing the rising demand and faltering supply of adoptable children in the U.S. as the main reason people are forced to adopt overseas). There are an average of four U.S. couples anxious to adopt for every domestic-born child placed through adoption. Id.; see infra note 67 (suggesting domestic eligibility requirements may restrict many people from benefitting from the supply of domestic available children).

64. See Shawne K. Wickham, The State of Adoption Today: Plenty Parents, Few Children, UNION LEADER, Sept. 29, 1996, at A1 (providing insight into the U.S. adoption scene and the lack of adoptable children). Since the decision in Roe v. Wade in 1972, the U.S. adoption agencies have noticed a steady decline in the number of children available for adoption. Id. The decrease in adoptable children is also widely attributable to poor counseling of pregnant teenagers who are not familiar with options aside from abortion. Id. Liz Stevens, The Adoption Option:
process is viewed as lengthy, troublesome and unpredictable. Prospective parents feel foreign countries are less likely to renege on an adoption compared with U.S. courts which have upheld parental rights of biological parents as superior to those of the adoptive parents. Another reason international adoptions are on the rise is because couples and singles approaching forty years of age, unmarried singles, and homosexuals, may not be eligible for most domestic adoptions. Still, most prospective parents going overseas to adopt are married couples in their late thirties who have been through years of unsuccessful fertility treatment and are yearning to start a family.

The traditional burdensome international adoption process may now be more accessible and convenient for U.S. families skeptical of domestic adoption programs. U.S. families can avoid the typical long wait of international adoptions and take advantage of the emerging Chinese export, a baby girl. China provides prospective parents an opportunity to adopt healthy children without the administrative difficulties often experienced in other foreign countries. In addition to a faster and more efficient adoption process, China's adoptable children are generally healthier than the children available for adoption in other foreign countries. Because health

65. See More Couples Look Abroad to Adopt, COLUMBUS DISPATCH, June 12, 1995, at 4D (relating the experience of a U.S. couple who tried to complete two separate adoptions only to have both birth mothers back out at the last minute after having waited several years to receive the children). The screening process for eligibility can be lengthy and the wait for a child can take years. Id.; Katz, supra note 20, at 293 (claiming the wait for a U.S. domestic adoption can take up to seven years).

66. See International Briefing: Profile of Foreign Adoptions, AMERICAN POLITICAL NETWORK ABORTION REP., Dec. 10, 1996 (citing fear of a U.S. court nullifying an adoption agreement as the greatest reason parents are going overseas to adopt); Austin, supra note 4 (explaining the recent case decisions which have prospective parents worried); see also Cynthia Hubert, From China With Love: More Babies U.S. Bound, SACRAMENTO BEE, Mar. 10, 1996, at A1 (emphasizing that children from China truly are orphans with no connections to their natural parents unlike many children available in the United States).


68. See Saul, supra note 12 (suggesting baby boomers, because of their age, comprise the majority of those seeking to adopt overseas, and they do so to take advantage of the relatively quick and easy adoption process); Kitchen, supra note 56 (inferring adoption was an alternative to costly and often ineffective medical treatment).

69. See generally Wickham, supra note 64 (discussing the attitudes of the adoption scene in the United States); Saul, supra note 12 (noting the surge in international adoptions and attributing the interest to quick and efficient procedures).

70. See Couples Can Look to the East, supra note 26 (citing the short waiting period for obtaining a child as a strong reason to consider adopting a child from China).

71. See Yvette Mena, Older Americans, Hoping to Adopt, Turn to China, USA TODAY, July 14, 1995, at 5A (comparing the Chinese system with that of Korea and many Latin American countries). In China, parents do not have to go through as much administrative red tape as in other foreign countries. Id.; Pamela Constable, The Family Man; Some Say James Gagel is an Adoption Angel. Others, Especially in Peru, Disagree, WASH. POST, Jan. 12, 1997, at F1 (detailing the frustrating experiences of many U.S. families who went to Peru hoping to adopt, but instead found themselves tangled in the bureaucratic system).

72. See infra notes 75-80 and accompanying text (comparing the overall health of adopted Chinese children with that of adopted children from other parts of the world).
of an adopted child is a major concern of prospective parents. China encourages foreigners to explore its vast resource of healthy adoptable children. A recent study conducted on over 150 newly adopted Chinese children showed that infectious diseases commonly found in international adoptees were uncommon among Chinese infants.

The Chinese government attributes the high level of healthy adoptable children to the fact few women in China abuse alcohol or tobacco. Unlike children from other countries with foreign adoption programs, children from China are not as likely to experience such gross abnormalities as autism, retardation, or attachment disorder. Overall, Chinese adoptees are typically healthy and experience few medical problems due to their young age and limited exposure to orphanage life. Parents seeking healthy children may prefer the quality of adoptable children offered in China since they are typically more responsive than other foreign adoptable children and rarely developmentally delayed.

The healthy nature of the Chinese orphan is one reason China has become a favorite adoption source among U.S. parents. In 1995, China exported more children...
to the United States than any other country, with more than 2,130 Chinese children adopted. An estimated 4,000 Chinese children are expected to have entered the United States in 1996. International adoption, specifically adoption in China, has come to be viewed as an important solution to the steady decline in available children within the United States.

III. THE FOREIGN ADOPTION PROCESS IN CHINA

China is the most populous country in the world and it comprises over one-fifth of the world’s total population of children. In an attempt to control population and prevent mass starvation, China implemented a one-child-per-family birth policy limitation. Since the one-child-per-family policy was introduced in 1979, approximately fifteen million female babies have disappeared from the country’s demographics as of 1995. Male children are preferred in China because they perpetuate the family name and take care of their parents in old age.

An estimated twenty-one million children are born annually in China, of which a possible 150,000 female infants are abandoned at train stations, along roadsides, or left in dustbins. If a woman with an unplanned pregnancy does not abort the fetus, the government may penalize her with fines totaling more than seventeen years

81. See Give Me Your Squalling Masses: Coming to America I, THE ECONOMIST, Feb. 3, 1996 (proclaiming China has surpassed countries such as Russia and South Korea which have previously supplied the majority of adoptable children to the United States).

82. International Adoption-China, (visited Nov. 9, 1996) <http://travel.state.gov/adoptions_china.html>. This figure is based upon the current trend of adopting from China compared with figures from previous years. Id.

83. See The Situation of Children in China, (visited Feb. 12, 1997) <http://fwcc.org/chinawhitepaper.html> (ranking China as the most populous country in the world with a population over 1.2 billion in 1994).

84. Of the total population in China, 300 million are children under the age of 16. Id.

85. See Barbara Jones, A Small Happiness, GOOD HOUSEKEEPING, Dec. 1, 1995 (stating population control as the government’s purpose for enacting the one-child-per-family limitation).

86. See Tom Hilditch, A Holocaust of Girls, WORLD PRESS REV., Sept. 1, 1995 (correlating the one-child-per-family rule promulgated by the government and the horrific number of infant girls which are helpless victims in a culture that places a higher value upon male heirs).

87. See Stevens, supra note 64 (stating that daughters, unlike sons, are expected to support their in-laws).

88. Hilditch, supra note 86.

89. Steve Mills, U.S. Couples Welcome China’s Adoption Policy; Since Foreign Ban Lifted, Thousands of Girls Move to West., Chi. Trib., May 18, 1995, at L1; Rone Tempest, Chinese Orphanage Gives Tour, Denies Abuse Claims; Asia: Former Chief of State-Run Facility Disputes Charges by Rights Group That Children Were Starved to Death, L.A. TIMES, Jan. 9, 1996, at A1; see Stengel, supra note 6 (explaining an experience in China where a bus driver was forced to travel at a slow speed in order to avoid hitting babies left along the roadside).
salary. Since only the government can arrange adoptions, families with unplanned pregnancies are not permitted to offer the child for adoption. When a mother refuses to abort the child, her only option is to abandon the baby before officials learn of the illegal birth to avoid punishment. Abandoning an infant female may be the best alternative for a mother who cannot bear to have her baby aborted, or killed after birth.

From this enormous population of abandoned infant females, many end up in one of China's seventy-three state operated orphanages. The incredibly large number of female Chinese babies placed in orphanages makes it easy for prospective parents to adopt the parentless infant females.

A. Historical Background of Foreign Adoptions in China

For centuries, childless families within China have been supplied with unwanted children. Traditionally, children living in China were adopted within the confines of their extended family and even then, the adoption was usually done on a lending basis only. It was not until 1981 that China enacted legislation officially recog-
nizing any form of adoption. Prior to the enactment of this legislation, Chinese officials maintained the Chinese government could best raise the orphans. The government refrained from allowing adoptions by foreigners because the Chinese did not want to admit imperfections inside their socialistic structure.

In 1988, the Chinese Communist government relaxed national adoption restrictions at the provincial level and made the process more accessible to foreigners wanting to adopt Chinese children. Despite the easing of restrictions, adoption procedures in China were still complicated and difficult. Under the 1988 adoption regulations, only foreigners of Chinese heritage, non-Chinese foreigners with strong ties to the country, or long-term foreign residents of China were eligible to adopt. Even with the relaxed procedures, only twelve Chinese-born children were adopted by U.S. families in 1988. Despite the attempt to make adoption more accessible, the number of Chinese children adopted into the United States remained relatively low through the early 1990s.


100. See Chinese Adoptions Put on Hold by Wary Government, (CNN television broadcast July 6, 1992) (claiming failings in the social system are a sensitive topic and not openly discussed by Chinese officials).

101. For the purposes of this Comment, “foreigner” will be used to identify persons not citizens of the People’s Republic of China.

102. See Sheryl WuDunn, Chinese Might Simplify Adoptions by Foreigners, N.Y. TIMES, June 22, 1992, at A5 (claiming that although restrictions were loosened, foreigners seeking to adopt still had to meet stricter requirements and endure a lengthier application process than did Chinese couples wishing to adopt).

103. See generally id. (explaining the lack of a national policy on adoptions by foreigners). All adoptions were coordinated directly with the various orphanages and not through the national government and therefore, policies and procedures varied from province to province. Id.

104. See American Adoptions From China Growing Rapidly (CNN television broadcast, Jan. 14, 1996) (commenting on adoptions in China before and after the 1992 Adoption Law); Foreign Adoptions Resumed, supra note 99 (reflecting upon the guidelines set by the Chinese Government pertaining to what foreigners were eligible to adopt).

105. See International Adoption-China, supra note 82 (listing the number of U.S. immigrant visas issued to Chinese orphans adopted abroad). These families would have been required to meet the criteria for what constituted a foreigner under the 1988 Adoption Law. Id.

106. See id. (citing the number of visas issued to Chinese born orphans as follows: 1989: 17; 1990: 29; and 1991:61).
B. The Enactment of the 1992 Adoption Law

In 1992 the Chinese government enacted the Adoption Law of China (Adoption Law) in response to the increased foreign demand to adopt Chinese children. The Adoption Law centralized foreign adoptions and eliminated much of the confusion and corruption that existed at the provincial level. In the Adoption Law, China outlined a national adoption policy that treated all foreigners, regardless of their heritage or connection to China, the same as its own nationals. The enactment of the Adoption Law in April 1992 motivated foreigners, most notably U.S. families, to take advantage of the streamlined procedures. Although the process can still be time consuming, frustrating and a drain on emotions and finances, the Chinese adoption process under the Adoption Law, now takes approximately one year if all paper work is in order.

All U.S. citizens, single or married, who are over thirty-five years old and childless are eligible to adopt a child with no pre-existing medical conditions. If the adoptive parents are under thirty-five years old, or already have a child, then the individual(s) are only eligible to adopt a child with a mild or correctable medical conditions.


108. See Foreign Adoptions Resumed, supra note 99 (explaining how prior to 1992, each province in China was responsible to regulating adoptions by non-Chinese citizens).

109. See id. (addressing goals and guidelines of the new Adoption Law).

110. See China Suspends Adoptions by Foreigners, AP, May 1, 1993, PM cycle (describing how foreigners only have to meet the same basic conditions to adopt as Chinese nationals).

111. See China Opens First Official Adoption Centre, REUTER LIBR. REP., Nov. 9, 1992 (attributing the rapid rise in foreign adoptions to the establishment of the officially sanctioned adoption center).

112. See Mena, supra note 71 (explaining the reasons for the increase in the interest in adopting from China); see also Kichen, supra note 56 (chronicling the events of a foreign adoption and the time line that can be expected).

113. Article 9 of the China Adoption law requires that spouseless men adopting a female must be at least 40 years older than the adoptee. Adoption Law of People’s Republic of China, supra note 107.

114. See Overview of Adopting in China (visited Nov. 9, 1996) <http://catalog.com/fwcfc/overview.html> (defining the requirements for adopting children). Couples with children from a previous marriage, but none with the current spouse, are considered childless for adoption purposes. Id.
condition. The age and civil requirements for adoptive parents are found within the current Adoption Law of China.

In addition to satisfying the demands of foreigners wanting to adopt Chinese babies, the Adoption Law envisioned closing the door on black market adoptions. The Adoption Law intended to prevent babies from leaving China through backdoor routes, which often included payoffs. However, the Adoption Law was not entirely successful because illegal adoptions continued.

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115. Id.; see infra notes 184-88 and accompanying text (detailing what may be considered mild or correctable medical conditions). Children within this classification are now referred to as "special needs." Id.


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117. See China Sets Rules, supra note 96 (recognizing illegal adoptions); Chris Yeung & Agence France Presse, New Agency to Monitor Child Adoption, S. CHINA MORNING POST, Feb. 14, 1994 (exposing illegal adoptions to couples from Singapore who have relatives in China willing to side step the adoption laws). Families from Singapore would locate Chinese families with strong health records and similar lineage as their own and then smuggle the children out of China after having paid the Chinese family for their child. Id.

118. China Sets Rules, supra note 96.

119. See infra notes 120-22 and accompanying text (discussing steps taken to correct the imperfect system).
C. 1993 Procedures: Understanding How the System Works

In March 1993, Chinese authorities officially suspended all adoptions to further prevent child racketeering and abuse of the system which was widespread due to the ever-increasing supply of adoptable children. A ten-month moratorium prohibiting adoptions was enforced to allow the Chinese government time to revise the procedural framework for overseas adoptions as well as guidelines for domestic adoptions. As a result of the moratorium, an administrative body was established, along with new procedures, allowing Chinese officials to closely supervise the adoption process.

The 1993 regulations’ first major revision to the Adoption Law established a new department to centralize the process and oversee the adoption of Chinese children by foreigners. Effective November 13, 1993, the China Adoption Organization (CAO) is responsible for centralized coordination of adoption of Chinese children by foreigners. The main functions of the CAO include, accepting applications from individuals or foreign licensed adoption agencies and attorneys, and facilitating the physical transition process between the Children’s Welfare Institute where the adopted child is temporarily housed, to the foreign adopters.

Before the adoption process can begin, the CAO must receive a completed application from the U.S. parents via their agency or attorney. Pursuant to Article 20 of the Adoption Law, a foreigner wishing to adopt a Chinese child is required to supply the Chinese government with proof of age, marital status, occupation, financial status, health condition, and a police record. All documents submitted to the Chinese government must be notarized, certified and authenticated with the seal of the Embassy or Consulate of China in the United States in order to be accepted in

120. See Yeung, supra note 117 (discussing the manner in which the Chinese government attempted to control the illegal adoption of its orphans).
121. China Opens First Official Adoption Centre, supra note 111.
122. See infra notes 123-34 and accompanying text (detailing the functions of the CAO as established under the 1992 Adoption Law).
123. See Yeung, supra note 117 (discussing the new system which will establish a supervisory body to deal directly with parents seeking to adopt). Under the new system, parents will be able to select the region of China they desire to adopt from, but will still be unable to identify specific children. Id.
124. See Adopting in China, supra note 116 (affirming the role of the CAO). The CAO is comprised of three members from the Ministry of Justice and three members from the Ministry of Civil Affairs. Id. The CAO facilitates the adoption process among the other governmental agencies which also play a role in the adoption process. Id.
125. See International Adoption-China, supra note 82 (explaining the fundamental purpose of the CAO).
126. See id. (suggesting that all parties interested in facilitating an adoption must submit an application to the CAO for approval). See also Adopting in China, supra note 116 (implying that the CAO wishes to deal only with licensed U.S. adoption agencies or attorneys)
127. Adoption Law of People’s Republic of China, supra note 107. See International Adoption-China, supra note 82 (detailing what documents are recommended in addition to those outlined in Article 20 of the China Adoption Law). The following documents are also required if applicable: statement that parents are childless; a medical certificate of infertility; two letters of reference; copy of property trust deeds; copy of social agency home study program; and letter of intent. Id.

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China. All documents submitted must also be accompanied by a certified Chinese translation bearing a notary's seal. In February 1994, the CAO was expanded to include an advance working group which is responsible for receiving all adoption applications. The establishment of the CAO as a centralized supervisory adoption entity has made the process for foreigners wanting to adopt very efficient and uniform.

Once the CAO has identified an available child, the child is then matched by the CAO with the prospective adoptive parents through an approved, U.S.-licensed adoption agency or attorney. Upon matching the child and prospective parents, the CAO forwards a referral informing the parents through the intermediary that the initial application has been accepted and a match has been made. Prospective parents then receive the referral portfolio about the child they have been matched with which includes the child's photograph, name and an approximation as to the child's date of birth. Once the parents accept the referral and complete the paperwork with either the assistance of an agency or attorney, the next step is a trip to China to pick up their new child.

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128. See Documents Required for Adopting From China (visited Nov. 9, 1996) <http://catalog.com.fwcfed/documents.html> at 1 (listing the following as required documents for adopting in China: original birth certificates for both parents, original copy of marriage license (if applicable), original divorce decree (if applicable), original copy of home study, three letters of reference, I-171-H form from the INS, verification of employment on employer's letterhead, medical letters claiming parents are in good health, police clearances, childless verification (can be included in home study), bank statement of financial assets, application letter of intent, statement of total financial obligations and debts, color photos of the adoptive family and photo of their home, and a copy of the passport photo page for both adopting parents).

129. International Adoption-China, supra note 82. The purpose for the notary seal is to verify the chain of evidence. Id. The documents in the application file are only valid with the notary seals. Id.

130. Adopting in China, supra note 116. All applications should be sent to the Advance Working Group in care of: Liu Nanzheng, Chief, Division of Civil Affairs, Department of Notarization, Ministry of Justice, No. 11 Xiangguang Li, San Yuan Qiao, Beijing, China 100016, telephone (86) (10) 467-7144 ext. 276; fax (86) (10) 466-2687. All applications must be approved by the advance working group which is comprised of six officials; three from the Ministry of Justice and three from the Ministry of Civil Affairs. International Adoption-China, supra note 82.

131. See Yeung, supra note 117 (discussing the role of the CAO and how families now deal directly with it when adopting a child making the process less arduous than before).

132. See International Adoption-China, supra note 82 (declaring the CAO as the institution that matches the children with prospective parents; infra notes 142-145 and accompanying text (discussing prerequisites for becoming an approved intermediary by the CAO).

133. International Adoption-China, supra note 82.

134. Since most children in the Children's Welfare Institutes have been abandoned, the agency can only guess when the child may have actually been born. Rae Corelli, Where Boys are Rare, MACLEAN'S, Aug. 21, 1995.
1. Selecting the Appropriate Path: Agency vs. Attorney

Adopting a child is a very personal and delicate issue, and not always the right choice for everyone. Families are likely to experience significant consequences after adopting a child from China. Prospective parents must want to become an interracial or intercultural family and be prepared to accept both the joy and the possible criticism that follows. Both agencies and attorneys should be able and willing to assist clients in resolving any concerns they may have. It will be up to the parents to decide which type of mediator to use.

Under the revisions to the Adoption Law, China encourages prospective parents to work with adoption agencies during the adoption process. If the prospective parents choose to work with an agency, it is important that the family consider the adoption agency’s experience and track record in adoptions from China. Because of the rapid surge in adoptions from China the adoption service has become a very competitive and lucrative business; therefore, it is important that the family examine with care each agency’s fee schedules and services.

Attorneys, like adoption agencies, must also seek acceptance from the CAO to become an authorized intermediary. All attorneys acting on behalf of families seeking to adopt must present the CAO with certified and authenticated copies of their license, American Bar Association membership, and U.S. state law in the state where they practice allowing them to act as an adoption intermediary.

135. See generally Kitchen, supra note 56 (suggesting adoption was never the next best thing to having a child, only a different route to parenthood). The idea to adopt overseas developed after much research and after haven spoken with many families who had successfully completed the process. Id.

136. See Wickham, supra note 64 (maintaining that adoption should be considered merely an option, not the option).

137. See generally Nancy E. Dowd, A Feminist Analysis of Adoption, 107 HARV. L. REV. 913, 921-22 (1994) (summarizing the impact a transcultural family may experience as positive and rewarding for those involved).

138. See generally id. at 916 (implying that the adoptive family, by mere definition, is inferior to the natural family and thus subject to cultural stigma).

139. International Adoption-China, supra note 82. The U.S. adoption agency must be approved by the CAO. Id. For a listing of approved state agencies in your state, contact the state office of the Attorney General. Id. The Better Business Bureau may also advise whether complaints have been filed against certain agencies, and if using an attorney, contact the state bar for similar information. Id.

140. The organization Families With Children From China has an comprehensive e-mail referral system which allows prospective parents to exchange questions and ideas regarding the adoption process. A partial listing of adoption agencies which have successfully facilitated Chinese adoptions is also available through its Internet sites. For more information from Families With Children From China, view its web site at http://catalog.com/fwcfc. Overview of Adopting in China, supra note 115.

141. See id. (discussing differences in fees and requirements among various U.S. agencies). The more expensive agencies tend to assist parents with the often complicated paperwork whereas the less expensive agencies leave that task to the parents. Id.

142. See supra notes 144-45 and accompany text (recommending all intermediaries seek approval from the CAO).

143. See International Adoption-China, supra note 82 (contrasting the requirements for agencies and attorneys).
has yet to announce under what circumstances applications submitted by non-agency attorneys may be accepted. Attorneys should seek a confirmation directly from the CAO before engaging in the intermediary process.

As a facilitator in the adoption process, attorneys and agencies are responsible for translating all communications with the CAO into Chinese, and then for translating the CAO's communications with the parents back into English. Because a foreign language can be intimidating, parents tend to work with agencies since they are usually more familiar with the international adoption process and thus have no difficulty transcending the language barrier through the use of qualified translators.

Since most parents seeking to adopt use the services of an adoption agency, the attorney should be able to recommend an approved adoption agency, describe the procedures, and estimate the time and costs to be expected. However, since the adoption process does involve meeting legal requirements once the child enters the United States it is recommended that families seek the assistance of an attorney even if an agency is ultimately used. After all, an attorney will be needed to represent the parents in state court if the parents seek a state adoption decree. Despite which route is pursued, it is important that the parents fully understand the procedures of each available method along with possible drawbacks, if any, of adopting from China.

2. Children Available for Adoption

After choosing either an attorney or an agency, and after the application has been processed with the help of their approved intermediary, foreigners are then only eligible to adopt children from a Children's Welfare Institute. Children's Welfare Institutes are orphanages administered by the Ministry of Civil Affairs through

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144. See id. (explaining how it is not clear under the present law whether applications submitted by non-licensed agencies will be accepted).
145. See id. (stressing only pre-approved intermediaries will be allowed to assist in the adoption process).
146. See id. (stating all translations, like all other documents in the application file, must be properly authenticated with a notary seal).
147. See Liu, supra note 25, at 200 (citing regular ongoing placement as a benefit for choosing an agency over an attorney).
148. There are more than 300 adoption agencies in the United States that place international orphans with U.S. families. Saul, supra note 12.
149. See generally Austin, supra note 4 (recommending the use of attorneys in the international adoption process to help families meet immigration requirements).
150. See id. (outlining the various legal steps an attorney will take in finalizing an international adoption).
151. See generally Saul, supra note 12 (providing insight into the confusing realm of adoption agencies and how parents were not fully advised about the ramifications of international adoptions).
152. See generally Mills, supra note 89 (citing the absence of the child's family medical and health history as a notable drawback adopting from China).
153. International Adoption-China, supra note 82. Children eligible for adoption must remain at the Children's Welfare Institute for at least two months before they are able to be released for adoption. Overview of Adopting in China, supra note 115.
Only children whose parents are deceased, who have been abandoned, or are handicapped are eligible to be placed in a Children's Welfare Institute. Healthy male children eligible for adoption are routinely placed with families within China and not within the Children’s Welfare Institute. Because of the preference for a male heir in the Chinese society, the vast majority of adoptable children without special needs are female. Therefore, most U.S. families will only be able to adopt a female child.

3. Securing the Child—The First Step

Under the 1992 Adoption Law, at least one of the parents must go to China in order to bring the child home to the United States. If a couple is adopting a child, and one spouse or partner is unable to visit China, the Chinese government requires that the visiting spouse obtain a properly notarized power of attorney for the non-visiting spouse. Parents should anticipate spending approximately ten to fourteen days in China to complete all paper work and finalize the adoption. During this time, parents are accompanied by a Chinese translator obtained in China to assist them with additional required paper work.

Once in China, and with the help of a translator, U.S. families routinely meet informally with a notary from the provincial capital for an interview. The interview is a formality used as a final assessment of the parents' motives and desires for

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154. *International Adoption-China*, supra note 82.
155. Id.
156. *Overview of Adopting in China*, supra note 115. It is also common for many healthy girls to be placed with families in China. Id.
157. See Jones, supra note 85 (explaining the belief in China that the birth of a male is a 'great happiness,' and the birth of a female is only a 'small happiness').
158. See Hilditch, supra note 86 (recounting an unprecedented number of female babies being abandoned and taken in by orphanages each year as a result the culture's value of male heirs). But see Corelli, supra note 134 (recounting a personal experience in China where the author was actually provided with a son despite the belief that only female children were available).
159. The Chinese government requires the adoptive parents come to China in order to execute all documents in person prior to the finalization of the adoption. *Adopting in China*, supra note 116.
160. Id. The U.S. consulate in Guangzhou where all parents must visit prior to leaving China with the child requires a notarized statement for the absent spouse if the couple is adopting a child with special needs certifying that the absent spouse is aware the adopted child will in fact have a mental or physical disability. Id.
161. See Jeff Hawkes, *Local Couples See Adoption Hopes in China*, INTELLIGENCER J., Oct. 11, 1996 (claiming the process was completed within ten days); Stevens, supra note 64 (citing the time needed as two weeks).
162. Telephone Interview with Gwen Andrus, mother of two adopted children from China (Feb. 16, 1997). The translator is prearranged through the U.S. intermediary and assists the families with all document translations and paper work in China. Id.
163. *International Adoption-China*, supra note 82; see Corelli, supra note 134 (describing the interview process which included exchanging thumb prints, taking of an oath that the parents would love the child forever, and that the parents would educate the child).
adopting a Chinese child. After the interview, parents sign the adoption agreement with the Children’s Welfare Institute who then registers the document with the Civil Affairs Bureau. Since the adopted child must leave China as a Chinese citizen, the Children’s Welfare Institute secures the child’s passport and exit permit from the provincial capital where the adoption occurs. Parents with serious concerns may request to see the child prior to finalizing the adoption, but it is still unclear whether this is possible under the adoption procedures.

The majority of parents do not see their child until just prior to signing the adoption papers. The actual delivery of the child frequently occurs at the local hotel where the adoptive parents are staying and not at the orphanage. Nannies from the orphanage bring the children wrapped in blankets to present to the parents. A possible explanation for the hotel delivery is a fear by Chinese officials that parents will decide against the adoption if allowed to view the orphanage where the child lived. This routine process of delivering the child outside of the orphanage occurs regularly as parents continue to flock to China to pick up their adopted baby.

164. See id. (reviewing the interview process which may entail having the parents write a short statement of why they chose China and what plans they have for the child once it is adopted).
165. See id. (outlining the formal signing procedures between the parents and the Children’s Welfare Institute).
166. See Mills, supra note 89 (explaining it is the responsibility of the adoptive parents to acquire U.S. citizenship for the child since the child leaves China as a Chinese citizen).
167. International Adoption-China, supra note 82.
168. See id. (suggesting only parents with serious concerns about the health of the child might be allowed to see the child prior to finalizing the adoption and thus have the child examined by a physician).
169. See Telephone Interview with Gwen Andrus, supra note 162 (detailing a personal experience where her child was given to her by a nanny from the orphanage long enough to hold and cradle before she was asked to give the child back to the nanny so that she could finalize the adoption by signing the adoption papers).
170. See Corelli, supra note 134 (describing how an adopted baby was delivered to the parents at a hotel). After hearing a knock on their room door, they opened the door and were presented with their child. Id. See Jones, supra note 85 (explaining the delivery of her child at her hotel room).
171. See Al Sokol, Now We’re a Family, TORONTO STAR, June 8, 1996 (describing the scene as five nannies emerged from the hotel elevator, each carrying two baby girls in their arms); Telephone Interview with Gwen Andrus, supra note 162 (reciting an experience where five children were delivered to four expecting parents). The extra child was available in case anyone was not satisfied with the one they were assigned. Id.
172. See Holly Burkhalter, American Parents and Chinese Babies, WASH. POST, Feb. 21, 1996, at A19 (insisting the government refuses to let adoptive parents view the orphanages because 50 to 90% of all orphans die in the institutes); see also John Boudreau, Abuse Charges Stir Adoptive Parents; Children: The Reports Pit American Concerned With Human Rights in China Against Those Desperate for Babies, L.A. TIMES, Feb. 7, 1996, at E6 (detailing the horrific conditions of some of the orphanages in China). But see Tempest, supra note 89 (countering attacks against the orphanages that claim conditions are poor and abuse is rampant); Jill Smolowe, Saving the Orphans: A Time Journalist Who Brought Home a Chinese Baby Worries that Beijing May Close the Doors to Adoptions, TIME, Jan. 22, 1996 (contradicting reports calling the orphanages death camps). Orphanages are described as operational with adequate heating, food, and blankets. Id.
173. See generally Monthly Adoption Rate From China (updated Jan. 22, 1997) <http://www.gos/Lex/95adoptions.html> (reflecting the number of monthly adoptions completed in China from October 1995 through December 1996).
Adopting Children From China

The new procedures issued in November 1993 streamlined the Adoption Law, allowing more people from the United States to experience the hotel delivery of their newly adopted Chinese child. Although the CAO was established to end black market adoptions and centralize the adoption process, its development also is credited for creating a uniform adoption practice that can successfully be completed within one year. Since that time, many people in the United States have taken advantage of China’s orphan surplus and added Chinese children to their families.

D. 1996 Enforcement of Requirements

In October 1996, the Chinese government announced it would strictly enforce existing eligibility requirements within the Adoption Law. The stern policies prevent children from being adopted by parents with criminal records, financial difficulties, or severe health disorders. The Chinese government will enforce more rigid regulations which require prospective parents to be tested for the HIV virus and undergo a criminal background check. China will strictly adhere to the requirement that only parents who are 35 to 45 years old, and childless, may adopt healthy Chinese children. An explanation for upholding the age and no other children requirements is the Chinese government strongly discourages families from having more than one child, and although not openly admitted, it may be encouraging this belief in other cultures.

Prospective parents under 35 years of age, with or without children, may now only adopt children with “special needs.” The definition of special needs is

174. See supra notes 123-34 and accompanying text (attributing the enactment of the 1993 procedures as the main reason foreign adoptions in China have increased).
175. See supra notes 117-23 and accompanying text (discussing the purposes behind the establishment of the CAO).
176. Telephone Interview with Gwen Andrus, supra note 162 (recounting her first experience in May 1995 that took exactly nine months from the date she started filing out the paper work to the time she was presented with her daughter).
177. Overview of Adopting in China, supra note 115.
178. Sauerwein, supra note 55; Telephone Interview with Gwen Andrus, supra note 162. Her second referral for a healthy Chinese child was revoked in November 1996 as a result of the announcement made by Chinese officials in October stating existing eligibility requirements would be strictly enforced. Id. Because of the stricter policies, she would only be eligible for a special needs child since she no longer qualified as a childless parent. Id.
179. Sauerwein, supra note 55.
180. Human immunodeficiency virus is the forerunner for acquired immunodeficiency syndrome (AIDS). STEDMAN'S MEDICAL DICTIONARY, supra note 59, at 1942-43.
181. Sauerwein, supra note 55.
182. China Abruptly Limits Adoptions, supra note 78. Older parents are viewed as more capable and more financially stable to adopt a child from China. Id.
183. See generally id. (implying that political critics of China’s system suggest the country has been trying to perpetuate its one child policy globally).
184. Sauerwein, supra note 55.
broad. Special needs could mean a child older than one year or a child with Down Syndrome. The government has created five categories of special needs which include: mental illness, mental deficiency, impairment of limbs, defects in vision, and defects in hearing. Many imperfections classifying a child as having special needs may not be readily apparent at the time of the adoption because it is difficult to detect disabilities at such an early age.

It will take time to realize how strict the Chinese government will be in adhering to the adoption requirements for prospective parents, and whether those parents only eligible for a special needs child will be able to adopt a healthy child. The tightened policy announced as to parent eligibility in October 1996 has initially been perceived as beneficial for the children, yet as a set back for the parents. Although the firm stance taken by the government may benefit children in the long-run, parents frustrated by the new changes may shift their focus to other countries with less stringent policies, thus eliminating the possibility for placement of the countless children living in orphanages. However, the most recent announcement by Chinese officials regarding the Adoption Law has had no effect upon the cost of adopting a child from China thus far.

E. Anticipated Costs of Adopting From China

Like domestic adoptions in the United States, money plays a significant role in international adoptions. The more money the prospective parents have, the greater their adoption options. Choosing to adopt a child from China can be expensive. The average cost of a completed adoption from China can range from US$10,000 to

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185. See China Abruptly Limits Adoptions, supra note 78 (suggesting that every person asked about what special needs means will likely respond with a different definition).
186. Id. Down’s Syndrome is defined as an abnormality of chromosome 21 resulting in mental retardation. STEDMAN’S MEDICAL DICTIONARY, supra note 59, at 1728.
187. See Adopting in China—General, supra note 116 (defining the meaning of special needs and handicapped children under the Adoption Law). Determining whether a child fits into one of these five categories is made on the basis of hindrance or loss of social function. Id.
188. Telephone Interview with Gwen Andrus, supra note 162. Although her first child was not classified as a special needs child, upon returning to the United States she subsequently learned that the child suffered from partial hearing loss and a blood abnormality. Id.
189. See Bill Smith, Locked Out: China Adoption Rules Sow Heartache, ST. LOUIS POST-DISPATCH, Dec. 3, 1996 (telling parents to remain hopeful during this period of transitory policy that may not have a significant impact on their eligibility).
190. See Sauerwein, supra note 55 (summarizing the view of experts who view the stricter stance as a means to protect the children from scurrilous profit seekers).
191. See China Abruptly Limits Adoptions, supra note 78 (expressing frustration felt among parents who feel they are being let down by the Chinese bureaucratic system).
192. See Sauerwein, supra note 55 (suggesting Korea, Russia and Guatemala may become more attractive to parents seeking to adopt overseas who do not wish to undergo the medical and criminal background checks).
193. Cf. id. (noting all the expected changes to accompany the new enforcement of the Adoption Law).
194. Katz, supra note 20, at 297.
US$20,000.195 Whereas the average cost for a domestic adoption in the United States ranges from US$3,000 to US$7,000.196 However, if all options are thoroughly explored, foreign adoptions can be price competitive with U.S. domestic adoptions.197

Included in the total price of adopting from China are all incidental fees that are paid directly by the parents and not by the facilitating agency or attorney.198 Once in China, the prospective parents pay the relevant registration and notarization fees to the Chinese adoption organizations.199 Parents are also expected to make a contribution of US$3,000 to US$4,000 to the orphanage where their child resided.200 The government expects the donation to be paid in crisp new US$100 bills.201 In addition to the orphanage contribution, the adopting parents may also have to pay for the child’s foster care up to the point of adoption.202 Other incidental fees can also be expected.

Parents seeking to adopt in China, but who are unable to meet the financial burden, may be eligible for financial assistance.204 Adoption Services International

195. The lower number represents figures from a less expensive agency with typically only one parent traveling with a minimum stay in China. Costs of Adopting From China (visited Nov. 9, 1996) <http://catalog.com/hwcfj/costs.html>. This cost will vary depending upon which adoption method is selected (agency or attorney) and the length of time the prospective parents stay in China. See Mills, supra note 89 (claiming adoption fees can be as much as US$20,000 after fees and travel are included). The following is an approximation of anticipated costs in U.S. dollars: Fees in the U.S.—INS application 1-600A $140, home study $500-1,500, agency/attorney fees $2,500-9,000, document fees (vary by location) $300-1,000, visa to enter China $80, translating documents into Chinese $0-15/page. Expenses in China—Chinese Ministries of Civil Affairs and Justice and notaries $1,000-1,300, orphanage donation $3,000-4,000, foster care (not offered everywhere) $0-600, child’s Chinese passport $50, child’s visa medical exam and visa photos $16, U.S. immigrant visa for adopted child $200. Travel and Living Expenses—round-trip airfare from U.S. East Coast to China $1,200-1,600 (per person), child’s return ticket to United States $103, travel within China $500 (varies with orphanage location), hotel and food $75-200/day, interpreters and guides $0-500. Fees upon return to the United States—U.S. naturalization $100, state birth certificate (varies from state to state), post placement agency visits $0-700. Overview of Adopting in China, supra note 115.

196. See Sauerwein, supra note 55 (explaining how domestic adoption fees differ). But see Stengel, supra note 6 (claiming the cost of a domestic adoption in the United States can be as high as US$15,000).

197. See Hawkes, supra note 161 (explaining that although domestic adoptions are typically half the price of foreign adoptions, a large portion of the expenses are incurred with traveling to China); see also Elliott, supra note 74 (suggesting parents can trim international costs by surveying different agencies and arranging affordable travel).

198. See Overview of Adopting in China, supra note 115 (including all fees paid in the U.S. and China, along with travel and living expenses in the total anticipated cost of adopting).

199. Wu Zheng, Campaign Aims at Drumming up Family-Related Laws, SHANGHAI STAR, Nov. 10, 1995; see Overview of Adopting in China, supra note 115 (outlining the estimated costs of expenses within China). The cost for registration and notarization is US$1,000 to US$1,300. Id.

200. Overview of Adopting in China, supra note 115; Tempest, supra note 89. Although the financial contribution is considered a donation, it is expected and required that all parents will pay this fee. Id. The contributions are used to refurbish and enhance the orphanages. Id. These contributions from prospective parents exceed the amount received from the annual government budget per child at some orphanages. Id.

201. Hawkes, supra note 161.

202. This service may not be offered everywhere and therefore the fee may not exist. Overview of Adopting in China, supra note 115; Wu Zheng, supra note 199.

203. See supra note 194-202 and accompanying text (listing all anticipated costs in adopting from China).

204. See infra notes 205-08 and accompanying text (outlining possible sources of financial aid).
(ASI) is a non-profit organization in the state of California that offers financial assistance in the form of subsidies to help needy families defray the expensive adoption costs. Many companies also provide corporate benefits to employees pursuing international adoptions. ASI actively seeks to match corporate grants that provide assistance to parents who adopt overseas. Another source of assistance is the non-profit National Adoption Foundation Loan Program. These financial assistance programs and borrowing opportunities make adopting children from China an option for most people.

The U.S. government has also made international adoptions more feasible for financially worried parents. Beginning January 1, 1997, adoptive parents of foreign children qualify for a one-time tax credit up to US$5,000 for healthy children, and up to US$6,000 credit for children with special needs. Attorney’s fees, counseling fees, airfare and travel, and fees for a home study evaluation, are just some of the costs that qualify for the federal tax credit. Although the initial financial figures for adopting from China may seem steep, there are many opportunities and programs for prospective parents to generate sufficient funds, thus allowing them to pursue their dream of acquiring a child from China.

From 1990 through 1994, only 1,400 U.S. immigration visas were issued to adopted Chinese babies. In 1995 alone, over a full year after the 1993 revisions to the Adoption Law, more than 2,000 Chinese babies were adopted by U.S. citizens. As the numbers suggest, the new adoption system in China is acknowledged by its placements as the best managed, fastest, and most efficient international adoption program in the world despite the significant amount of money which is required.

205. *International Adoption Agency Announces Plan to Recruit 100 Families for 100 Chinese Orphans in 100 Days*, PR Newswire, Feb. 1, 1996 [hereinafter *International Adoption Agency Announces Plan to Recruit 100 Families*].

206. See *Adoptions Take Time and Money, But Help is Available*, Orange Country Reg., Oct. 9, 1996 at C3 [hereinafter *Adoptions Take Time and Money*] (stating more than 150 companies in California offer financial assistance to help employees defray adoption costs).

207. *International Adoption Agency Announces Plan to Recruit 100 families*, supra note 205.

208. Parents interested should contact (800) 448-7061. The organization also awards grants to persons in financial need. *Adoptions Take Time and Money*, supra note 206.


210. See *Adoptions Take Time and Money*, supra note 206 (discussing the new tax incentive available to parents whose total adjusted gross income is less than US$75,000 in the year they adopt). The tax credit was part of the Small Business Job Protection Act signed into law in August 1996. *Id.*

211. See Neil Downing, *Adoption Tax Break Federal Benefit Only*, Providence J., Jan. 7, 1996, at 1E (outlining costs that may be eligible for the federal tax credit). All expenses must have been accrued after January 1, 1997. *Id.*

212. Boudreau, supra note 172.

213. See generally *id.* (outlining the increase in foreign adoptions).

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IV. FINALIZING THE FOREIGN ADOPTION IN THE UNITED STATES

Between 1990 and 1994, over 1,369 adopted Chinese children entered the United States through the immigration process. During the 1995 fiscal year, 2,130 visas were issued to Chinese children, and it is anticipated that over 4,000 additional visas will have been processed in 1996. As the dramatic increase in adoptions indicates, China’s Adoption Law provides U.S. parents with one of the most efficient international adoption programs available.

A. The U.S. Legal Process

Arriving in the United States with their newly adopted child, the parents have already completed the first step in the international adoption process by satisfying the adoption laws of China. To make the process complete, parents must satisfy the second step in the process by meeting U.S. immigration law and finally, complete the last step of the process by adhering to the adoption laws of the state where the family will reside. These next two steps in the international adoption process take place once the parents and child return to the United States. Because newly adopted children must leave China as Chinese citizens, it is the parents’ responsibility to obtain U.S. citizenship for the adopted Chinese child.

1. U.S. Immigration—The Second Step

Upon entering the United States, the INS operating under the U.S. Department of State, must grant the adopted Chinese child an immigration visa. The INS does not have the authority to approve a foreign adoption; however, it is required to determine whether the petitioning parents are qualified to receive the newly adopted child, and whether the child is eligible for adoption. In making its administrative


216. International Adoption-China, supra note 82.


218. See supra notes 159-70 and accompanying text (outlining steps prospective parents must meet to satisfy the Chinese Adoption Law).

219. Liu, supra note 25, at 198.

220. See id. (outlining the three step process to complete an international adoption, two of which are carried out in the U.S.).

221. Mills, supra note 89.

222. See generally International Adoptions (visited Nov. 9, 1996) <http://travel.state.gov/intladoption.html> (outlining the foreign adoption process and the role of the INS).

decision about the adoptability of the child, the INS bases its decision upon the same information provided to the state court where the U.S. adoption decree will be awarded. After the determination of adoptability is made by the INS, the parents are one step closer to securing a visa for the child.

a. Requirements of Parents

If the adoptive parents of the child are married, at least one spouse must be a U.S. citizen in order to be deemed eligible to bring the child into the United States. If the adoptive parent is single, she must be also be a U.S. citizen and be at least twenty five years old. Next, parents will need to provide immigration officials with the proper forms and petitions. The adopted orphan cannot be admitted into the United States without the INS approved petition form I-600. INS officials require the prospective parents to comply with section 101 (F) of the Immigration and Naturalization Act which sets forth the federal requirements necessary to complete the adoption of a Chinese child. According to the Act, immigration officials must receive a report on the adoptive parents’ qualifications under their home state law and determine whether that state’s court would approve of the applicants as adoptive parents. Additionally, the INS must be satisfied the Chinese child will be provided with the proper care after entering the United States.

To help measure whether proper care will be provided, prospective parents must successfully complete a federally-mandated home study program. This program mandates that a certified social worker visit and interview the prospective parents in their home, survey living accommodations, and evaluate the mental health and

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as orphans, parents should declare the child as an “immediate relative” according to the Immigration and Nationality Act § 101(b)(1)(F). Id.

224. See generally Carlson, supra note 10, at 342 (pointing to the duplication in the determination process between the INS and the state courts).

225. See generally Liu, supra note 25, at 205-07 (setting forth the necessary procedures of U.S. immigration law).


227. Id.

228. Once the decision to adopt has been made, prospective parents should immediately contact a local INS office and request the I-600 A form and two fingerprint cards. The I-600 A form is valid for 18 months and can be transferred to any country. This request should be made prior to the parents departure to China. Overview of Adopting in China, supra note 115.

229. The I-600 A form should be used if the parents has not yet identified the child. If the child has already been identified, the parents should then use the I-600 form. International Adoptions, supra note 222.


231. Id.

232. The INS makes this determination based upon state requirements which include an independent home study of the prospective parents, fingerprinting, a check of the parents criminal history, and by reviewing pertinent financial statements. Goldsmith, supra note 223, at 1777-78.


234. The interview must include a discussion of the often encountered difficulties, delays and expenses associated with international adoptions. Goldsmith, supra note 223, at 1778.
history of the adoptive parents. The parents will also have to provide background information about the child they wish to adopt from China. The scrutinizing process performed by the INS ensures that both the parents and baby are qualified, and eligible, for the adoption to be final.

b. Relinquishment Requirements

After the INS has deemed the child eligible for adoption, the parents must supply proof that China has relinquished the child before the INS accepts the international adoption as official. Under U.S. law, a child is considered relinquished if the rights of the birth parents have been properly terminated. Relinquishing the child requires the adoption be final before leaving China. Parental rights may be relinquished through voluntary surrender, death of the parents, or through a formal judicial or administrative proceeding, in the foreign country. Because only children in orphanages are available for adoption in China, parental rights are surrendered once the child enters the Children’s Welfare Institute, and thus the U.S. relinquishment requirement is met. Once the INS concludes the child is relinquished, it will grant the child a visa and allow the child to enter the United States.

235. See id. (outlining the process of a home study). The social worker will also determine why the parents seek to adopt and arrange plans for post-adoption counseling. Id.
236. Katz, supra note 20, at 294.
237. See generally Lippold, supra note 5, at 482-84 (outlining federal regulations under the U.S. Code governing international adoptions).
238. Goldsmith, supra note 223, at 1774.
239. See Carlso, supra note 10, at 335 (summarizing the effects of relinquishment). Relinquishment of a child terminates all legal rights the parent may have over the child. Id. The effects of relinquishment are eventually irreversible for both the parent and child. Id.
240. See International Adoption-China, supra note 82 (describing relinquishing the child once the adoption is final). If parents change their mind once the adoption is final and after the child has been relinquished, but before leaving China, the government requires a notarized statement formally dismissing the child as their own before that child will be allowed to receive the benefits of China’s social system. Adopting in China, supra note 116 (stating adoptions must be complete and finalized under Chinese law prior to returning to the United States).
242. See Adopting in China, supra note 116 (outlining the three categories of adoptable children who can be found in orphanages: 1) a child whose birth parents are deceased; 2) abandoned children whose birth parents cannot be located; 3) children whose birth parents are unable to provide for them due to unusual hardship).
243. See generally International Adoption-China, supra note 82 (implying that children placed in any Children’s Welfare Institute are completely disconnected from their birth parents).
244. Goldsmith, supra note 223, at 1774.
2. Obtaining a State Adoption Decree—The Final Step

The final step of the international adoption is the obtaining of a state adoption decree through a judicial proceeding. The INS may grant the Chinese child the right to lawful residence in the United States through the issuance of a visa, but it is ultimately the adoptive parents’ state court that legally certifies the adoption. Parents should seek an adoption decree from their state in order to guarantee full recognition of the parent-child relationship under the law. The state court is not required to extend full faith and credit to the foreign adoption decree. Although awarding an adoption decree is ultimately the decision of the state court where the family plans to reside, the courts typically rely heavily upon the advice of the investigating social worker who has visited the prospective parents’ home and evaluated their mental health and reasons for adopting.

At this point, the parents should seek the assistance of legal counsel to ensure that all U.S. adoption eligibility requirements have been met to guarantee the issuance of the adoption decree. Although issues of adoptability rarely surface once the parents are in state court, an attorney can provide parents with the necessary representation during the state legal proceeding. After all applicable fees have been paid, the proper visa obtained, and the state adoption decree has been issued, the newly adopted child is on its way to becoming a citizen of the United States of America.

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246. Carlson, supra note 10, at 351.

247. See id. at 352 (recommending that readoption take place in the state court to ensure the adoptive family is guaranteed all legal rights under the law). The state adoption decree would protect families from future legal disputes challenging the validity of the foreign adoption. Id.

248. See Katz, supra note 20, at 297 (discussing how a foreign adoption decree, like any other foreign decree, is not automatically assumed to be valid). The adoption decree is necessary if the parents desire to receive a birth certificate for the child. Id. The final step in awarding a state adoption decree is that the child must complete the entire process of becoming a citizen of the United States which usually takes about six months to a year. Id. But see Romano, supra note 29, at 580-81 (noting Alaska, Arkansas, and Florida have all enacted statutes giving foreign adoption decrees the same finality as those issued by American courts).

249. Carlson, supra note 32, at 289.

250. See Katz, supra note 20, at 295 (reviewing the process of a federally mandated home study program).

251. Telephone Interview with Gwen Andrus, supra note 162. An attorney was needed for both adoptions to finalize the process in Utah state court. Id.

252. See Carlson, supra note 10, at 354 (estimating problems as to adoptability of foreign children to be less than two percent of the total number of all international adoptions).

253. See generally Bisignaro, supra note 245, at 131 (stating that before a child can become a U.S. citizen, the child must be a lawful permanent resident of the U.S. under the age of 16 and must have obtained a Certificate of Naturalization); Katz, supra note 20, at 297 (noting the six month to a year period after the state adoption decree has been issued in which the child has to complete the immigration process before becoming a U.S. citizen).
V. CONCLUSION

The parameters set up under the 1992 China Adoption Law, and the administrative structure formulated to compliment it, have created a user-friendly atmosphere likely to appeal to anyone interested in adopting a child from a foreign country.\textsuperscript{254} The creation of the CAO, as outlined in China’s 1993 adoption procedures, established a uniform adoption practice that can successfully be completed within one year of application.\textsuperscript{255} The Adoption Law provides prospective adopters the legal framework necessary to adopt a Chinese child in the most efficient way possible.\textsuperscript{256} The shear number of children that have come into the United States from China is the best evidence of the success of their adoption system.\textsuperscript{257} The increase in families desiring to adopt from China has opened up a new frontier for the legal practitioner that was virtually unknown ten years ago.\textsuperscript{258}

China’s adoption resources are practically endless for those desiring to adopt a healthy infant female.\textsuperscript{259} The Chinese adoption system allows parents to enjoy a vast resource of healthy children, an advantage not commonly found in other countries offering similar services.\textsuperscript{260} A network of families who have successfully adopted children from China is rapidly expanding. This network serves as a resource for parents interested in adopting from China.\textsuperscript{261} Once the decision has been made to adopt a child from China and the parents receive their long-awaited gift; the paper work, the travel, the fees, and any frustrations will all prove to be worthwhile.\textsuperscript{262}

\begin{itemize}
\item \textsuperscript{254} See generally Couples Can Look to the East, supra note 26 (describing the smooth and predictable adoption process in China).
\item \textsuperscript{255} Telephone Interview with Gwen Andrus, supra note 162 (recounting her first experience in May 1995 that took exactly nine months from the date she started filing out the paper work to the time she was presented with her daughter).
\item \textsuperscript{256} See supra notes 107-94 and accompanying text (examining the legal procedures of the Adoption Law).
\item \textsuperscript{257} See supra notes 81-82 (citing the total number of Chinese children adopted into the United States).
\item \textsuperscript{258} See supra notes 135-52 and accompanying text (outlining the steps to be taken by an attorney assisting in adopting a child from China).
\item \textsuperscript{259} See Boudreau, supra note 172 (suggesting the number of available Chinese children in orphanages exceeds 100,000).
\item \textsuperscript{260} See Saul, supra note 12 (acknowledging shorter time in an institutional setting as the reason Chinese children tend to be healthier and less developmentally challenged than other orphans). The efficient adoption system allows children from China to arrive an average of nine months younger than their Eastern European counterparts, making them more robust than other orphans of the world. \textit{Id}.
\item \textsuperscript{261} See note 140 and accompanying text (explaining the support organization founded by Families With Children From China).
\item \textsuperscript{262} See Hawkes, supra note 161 (describing how nothing, not even the high cost of adopting or travel to China, could deter a couple from having a child to call their own).
\end{itemize}
quick and smooth process may even be completed in less time than a full-term pregnancy without all the side effects. Cradled in the arms of an efficient law, the new Chinese export—the healthy, beautiful baby girl—is the reason why China has become the favorite surrogate nursery of the United States, if not the world.

263. See Jones, supra note 85 (recounting the eight month adoption process an adoptive mother went through).

264. See generally Peggy O'Crowley, Baby Waits at End of Long Road to China: Country Tops Adoption Lists, THE RECORD, Apr. 7, 1996 at A10 (claiming China as the number one supplier of adoptable children in the world for the second time in a row).