

January 29, 2020

Hon. Chairman Patton

Kansas House Judiciary Committee

Kansas State Capitol

300 SW 10th St.

Topeka, Kansas 66612

RE: HB2333: An Act concerning children and minors: relating to adoption; date of final decree; amending K.S.A. 2018 Supp. 59-2134 and repealing the existing section.

Dear Honorable Committee Members:

My name is Kathleen Harvey and I am an attorney, although one not actively practicing at this time. My primary practice over 20-plus years has been as an immigration attorney. My remarks will be brief, as you have two other conferees who are more experienced and well-educated in the laws we are discussing.

My experience over these years has focused on children in the State of Kansas. Mainly children in the Kansas foster care system. Under what US law refers to as Special Immigrant Juvenile Status, I have had the privilege to work with the Kansas Department of Children and Families on over 100 cases to help obtain Legal Permanent Residence for those unable to return to their parent. This was my heart's work.

I will ask your indulgence for one short story and three examples of why I wanted to speak before you today.

One day when I was in the 7th Grade and walking home from St. Elizabeth's School with Elizabeth Bellante, she asked me what I wanted to be when I grew up. I didn't even think about it before the words "a lawyer" popped out of my mouth. I had never thought about that before and no one in my family had even gone to college, let alone become an attorney.

Well, fast forward to 1989, and at the age of 42, I did begin law school....Terrified as I was, surrounded by bright, articulate, brainy young people. I had earned my Paralegal Certificate, but it seemed skimpy...not quite enough. With the help of my brother, a couple of unexpected scholarships, and my boss who let me make my own hours at the VA Hospital and gave me a raise because no one else besides me wanted to work with Labor Relations.

The point of this ancient history is the experience I had in 1991 taking law credit classes overseas in London and then in Prague, in the Czech Republic. The difference between the two

country's laws was astonishing. First, in England, we studied not just the law, but how it had evolved and even changed completely after the Magna Carta, with the honest and tireless work of its judges and law makers, – combining the “common” law as the system our Founders so wisely gave us.

Then to Prague, a country fairly recently liberated from the grip of the Soviet Union. There, to my astonishment, the “professor” simply read the laws to us for 3 weeks. Not the “case” law, where bad laws created by the officials had been overturned by the judges or the legislators. We weren't to think about the right or wrong of any of it, just memorize and follow along. They had no idea about “common” law or any legal opportunity to challenge the decrees of the officials and law makers.

I had the chance to crystalize this experience one afternoon during the last semester of law school. I was on a panel with a Professor when a student asked why the Law School didn't teach courses on HOW to file a petition, or HOW to do all the proper paperwork associated with court appearances, etc..

I jumped in and asked if I could answer that one. Because the light bulb lit up. And I'll never forget what it meant to me to say that we students were NOT here to learn how to APPLY the laws, but to never forget that we are learning about how those heroes before us refused to let unwise or unjust laws rule.

As today's guardians of rights and laws in this State, as officials, legislators, judges, and attorneys we uphold the blessings and rights our founders established.

So that's my story of when I got “woke” as the kids say, as to the amazing path our American system gives us.

And now I would like to offer three quick examples of why 3 new paragraphs will make so much difference to so many children and parents.

1. Why is the timing of the formal adoption so critical...even I would say, life or death?

Carlos, a young man of about 20, was held by Immigration police and was to appear before the Judge who would most likely deny him any opportunity for relief. His mother came to my office after two other attorneys had said there was no relief for him. I took the case because I didn't know any other way to help, except to give her hope and do my best. While I was researching for some solution, by some miracle of circumstance, I was at that Immigration Office for a monthly meeting of attorneys and the Immigration Service leaders, when Carlos mother came in the lobby and saw me, saying they were going to take him away today. My only hope was to try to calculate the date SHE became a US Citizen and as a divorced mother with custody of Carlos, perhaps he was already automatically, by operation of law, a US Citizen through his mother. When we were called before the Immigration Judge, I asked for a continuance to check on this possibility. The officers and the Director in the room, jumped up to see his file in front of their attorney. After some discussion and another meeting, the mother returned with her divorce decree and proof of her citizenship.

This meant that she had become a citizen only a few months before Carlos aged out of the opportunity to be automatically granted US Citizenship. They all left in tears.

While this example does not involve adoption, it is just one of many harsh penalties for missing deadlines in our country's immigration laws. When those penalties wrongly apply to children, the wisdom to perhaps reverse those on behalf of the innocents should rightly belong to our Kansas judges in amending the Statute to backdate the final decree of adoption.

- 2. Nunc Pro Tunc adoption degree has been granted in my experience.** Many years ago, an unsuspecting parent who had adopted a child overseas was required to finalize the adoption in the state of residence. In this case, Kansas. After that mandatory date was inadvertently passed by less than a few months, it would have been too late to ever obtain automatic Citizenship status. However, given that the petition had been on file and could have been finalized earlier, but for court processing times, the Judge granted the backdated order and citizenship was automatic by law.
I particularly appreciate that HB2333 includes important limits and safeguards. I once had a client want me to get citizenship for their adopted adult child. It doesn't work for adults.
- 3. The Kansas child welfare system has enormous challenges. They do not have experienced Immigration Attorneys on their staff. Bringing on qualified Immigration Attorneys is the best course of action, but not always available and, in my experience an overwhelming problem today.**

The best example I can share is Angelique. A young woman in her 20's who aged out of the Kansas foster care system, believing she was a US Citizen, which she was not. She had grown up and wanted to join the military, but couldn't prove she was a US Citizen, so she went back to her foster mother for help. Her foster mother never realized what adopting her back then would have meant for her. So I went to the State and asked for her file. Turns out the State had hired two different attorneys over time to figure out what to do for her status.

I was able to apply a rarely used law, known as the US Foundling Statute (INA 301(f)), whereby "a person of unknown parentage found in the United States while under the age of five years, until shown, prior to obtaining the age of twenty-one years, not to have been born in the United States..." shall be considered a US Citizen. We applied for her under this law and finally at the end of the meeting with the Immigration Services Officer, we were asked to go get some lunch and when we come back they would have her US Citizenship Certificate ready.

Angelique screamed with joy, threw her arms around my neck and sobbed "You have given me back my life."

I don't know if you perhaps decided to be a State Legislator when you were walking home from the 7th Grade. But I do know that your charge and your wisdom mean everything in these cases.

The three paragraphs proposed in this bill, give these children back their lives.

Thank you for your time and consideration.

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