

Republic Act No. 8043

AN ACT ESTABLISHING THE RULES TO GOVERN INTER-COUNTRY ADOPTION OF FILIPINO CHILDREN, AND FOR OTHER PURPOSES.

Article I. ***General Provisions***

Section 1. *Short Title.* — This Act shall be known as the "Inter-Country Adoption Act of 1995."

Sec. 2. *Declaration of Policy.* — It is hereby declared the policy of the State to provide every neglected and abandoned child with a family that will provide such child with love and care as well as opportunities for growth and development. Towards this end, efforts shall be exerted to place the child with an adoptive family in the Philippines. However, recognizing that inter-country adoption may be considered as allowing aliens not presently allowed by law to adopt Filipino children if such children cannot be adopted by qualified Filipino citizens or aliens, the State shall take measures to ensure that inter-country adoptions are allowed when the same shall prove beneficial to the child's best interests, and shall serve and protect his/her fundamental rights.

Sec. 3. *Definition of Terms.* — As used in this Act. the term:

(a) Inter-country adoption refers to the socio-legal process of adopting a Filipino child by a foreigner or a Filipino citizen permanently residing abroad where the petition is filed, the supervised trial custody is undertaken, and the decree of adoption is issued outside the Philippines.

(b) Child means a person below fifteen (15) years of age unless sooner emancipated by law.

(c) Department refers to the Department of Social Welfare and Development of the Republic of the Philippines.

(d) Secretary refers to the Secretary of the Department of Social Welfare and Development.

(e) Authorized and accredited agency refers to the State welfare agency or a licensed adoption agency in the country of the adopting parents which provide comprehensive social services and which is duly recognized by the Department.

(f) Legally-free child means a child who has been voluntarily or involuntarily committed to the Department, in accordance with the Child and Youth Welfare Code.

(g) Matching refers to the judicious pairing of the adoptive child and the applicant to promote a mutually satisfying parent-child relationship.

(h) Board refers to the Inter-country Adoption Board.

Article II

The Inter-Country Adoption Board

Sec. 4. *The Inter-Country Adoption Board.* — There is hereby created the Inter-Country Adoption Board, hereinafter referred to as the Board to act as the central authority in matters relating to inter-country adoption. It shall act as the policy-making body for purposes of carrying out the provisions of this Act, in consultation and coordination with the Department, the different child-care and placement agencies, adoptive agencies, as well as non-governmental organizations engaged in child-care and placement activities. As such, it shall:

(a) Protect the Filipino child from abuse, exploitation, trafficking and/or sale or any other practice in connection with adoption which is harmful, detrimental, or prejudicial to the child;

(b) Collect, maintain, and preserve confidential information about the child and the adoptive parents;

(c) Monitor, follow up, and facilitate completion of adoption of the child through authorized and accredited agency;

(d) Prevent improper financial or other gain in connection with an adoption and deter improper practices contrary to this Act;

(e) Promote the development of adoption services including post-legal adoption;

(f) License and accredit child-caring/placement agencies and collaborate with them in the placement of Filipino children;

(g) Accredit and authorize foreign adoption agency in the placement of Filipino children in their own country; and

(h) Cancel the license to operate and blacklist the child-caring and placement agency or adoptive agency involved from the accreditation list of the Board upon a finding of violation of any provision under this Act.

Sec. 5. *Composition of the Board.* — The Board shall be composed of the Secretary of the Department as ex officio Chairman, and six (6) other members to be appointed by the President for a nonrenewable term of six (6) years: Provided, That there shall be appointed one (1) psychiatrist or psychologist, two

(2) lawyers who shall have at least the qualifications of a regional trial court judge, one (1) registered social worker and two (2) representatives from non-governmental organizations engaged in child-caring and placement activities. The members of the Board shall receive a per diem allowance of One thousand five hundred pesos (P1,500) for each meeting attended by them: Provided, further, That no compensation shall be paid for more than four (4) meetings a month.

Sec. 6. Powers and Functions of the Board. — The Board shall have the following powers and functions:

(a) to prescribe rules and regulations as it may deem reasonably necessary to carry out the provisions of this Act, after consultation and upon favorable recommendation of the different agencies concerned with the child-caring, placement, and adoption;

(b) to set the guidelines for the convening of an Inter-country Adoption Placement Committee which shall be under the direct supervision of the Board;

(c) to set the guidelines for the manner by which selection/matching of prospective adoptive parents and adoptive child can be made;

(d) to determine a reasonable schedule of fees and charges to be exacted in connection with the application for adoption;

(e) to determine the form and contents of the application for inter-country adoption;

(g) to institute systems and procedures to prevent improper financial gain in connection with adoption and deter improper practices which are contrary to this Act;

(h) to promote the development of adoption services, including post-legal adoption services,

(i) to accredit and authorize foreign private adoption agencies which have demonstrated professionalism, competence and have consistently pursued non-profit objectives to engage in the placement of Filipino children in their own country: Provided, That such foreign private agencies are duly authorized and accredited by their own government to conduct inter-country adoption: Provided, however, That the total number of authorized and accredited foreign private adoption agencies shall not exceed one hundred (100) a year;

(j) to take appropriate measures to ensure confidentiality of the records of the child, the natural parents and the adoptive parents at all times;

(k) to prepare, review or modify, and thereafter, recommend to the Department of Foreign Affairs, Memoranda of Agreement respecting inter-country adoption consistent with the implementation of this Act and its stated goals, entered into, between and among foreign governments, international organizations and recognized international non-governmental organizations;

(l) to assist other concerned agencies and the courts in the implementation of this Act, particularly as regards coordination with foreign persons, agencies and other entities involved in the process of adoption and the physical transfer of the child; and

(m) to perform such other functions on matters relating to inter-country adoption as may be determined by the President.

Article III **Procedure**

Sec. 7. Inter-Country Adoption as the Last Resort. — The Board shall ensure that all possibilities for adoption of the child under the Family Code have been exhausted and that inter-country adoption is in the best interest of the child. Towards this end, the Board shall set up the guidelines to ensure that steps will be taken to place the child in the Philippines before the child is placed for inter-country adoption: Provided, however, That the maximum number that may be allowed for foreign adoption shall not exceed six hundred (600) a year for the first five (5) years.

Sec. 8. Who May be Adopted. — Only a legally free child may be the subject of inter-country adoption. In order that such child may be considered for placement, the following documents must be submitted to the Board:

- (a) Child study;
- (b) Birth certificate/foundling certificate;
- (c) Deed of voluntary commitment/decreed of abandonment/death certificate of parents;
- (d) Medical evaluation /history;
- (e)Psychological evaluation, as necessary; and
- (f) Recent photo of the child.

Sec. 9. Who May Adopt. — An alien or a Filipino citizen permanently residing abroad may file an application for inter-country adoption of a Filipino child if he/she:

(a) is at least twenty-seven (27) years of age and at least sixteen (16) years older than the child to be adopted, at the time of application unless the adopter is the parent by nature of the child to be adopted or the spouse of such parent:

(b) if married, his/her spouse must jointly file for the adoption;

(c) has the capacity to act and assume all rights and responsibilities of parental authority under his national laws, and has undergone the appropriate counseling from an accredited counselor in his/her country;

(d) has not been convicted of a crime involving moral turpitude;

(e) is eligible to adopt under his/her national law;

(f) is in a position to provide the proper care and support and to give the necessary moral values and example to all his children, including the child to be adopted;

(g) agrees to uphold the basic rights of the child as embodied under Philippine laws, the U.N. Convention on the Rights of the Child, and to abide by the rules and regulations issued to implement the provisions of this Act;

(h) comes from a country with whom the Philippines has diplomatic relations and whose government maintains a similarly authorized and accredited agency and that adoption is allowed under his/her national laws; and

(i) possesses all the qualifications and none of the disqualifications provided herein and in other applicable Philippine laws.

Sec. 10. Where to File Application. — An application to adopt a Filipino child shall be filed either with the Philippine Regional Trial Court having jurisdiction over the child, or with the Board, through an intermediate agency, whether governmental or an authorized and accredited agency, in the country of the prospective adoptive parents, which application shall be in accordance with the requirements as set forth in the implementing rules and regulations to be promulgated by the Board.

The application shall be supported by the following documents written and officially translated in English.

(a) Birth certificate of applicant(s);

(b) Marriage contract, if married, and divorce decree, if applicable;

(c) Written consent of their biological or adoptive children above ten (10) years of age, in the form of sworn statement;

(d) Physical, medical and psychological evaluation by a duly licensed physician and psychologist;

(e) Income tax returns or any document showing the financial capability of the applicant(s);

(f) Police clearance of applicant(s);

(g) Character reference from the local church/minister, the applicant's employer and a member of the immediate community who have known the applicant(s) for at least five (5) years; and

(h) Recent postcard-size pictures of the applicant(s) and his immediate family;

The Rules of Court shall apply in case of adoption by judicial proceedings.

Sec. 11. Family Selection/Matching. — No child shall be matched to a foreign adoptive family unless it is satisfactorily shown that the child cannot be adopted locally. The clearance, as issued by the Board, with the copy of the minutes of the meetings, shall form part of the records of the child to be adopted. When the Board is ready to transmit the Placement Authority to the authorized and accredited inter-country adoption agency and all the travel documents of the child are ready, the adoptive parents, or any one of them, shall personally fetch the child in the Philippines.

Sec. 12. Pre-adoptive Placement Costs. — The applicant(s) shall bear the following costs incidental to the placement of the child;

(a) The cost of bringing the child from the Philippines to the residence of the applicant(s) abroad, including all travel expenses within the Philippines and abroad; and

(b) The cost of passport, visa, medical examination and psychological evaluation required, and other related expenses.

Sec. 13. Fees, Charges and Assessments.— Fees, charges, and assessments collected by the Board in the exercise of its functions shall be used solely to process applications for inter-country adoption and to support the activities of the Board.

Sec. 14. Supervision of Trial Custody. — The governmental agency or the authorized and accredited agency in the country of the adoptive parents which filed the application for inter-country adoption shall be responsible for the trial

custody and the care of the child. It shall also provide family counseling and other related services. The trial custody shall be for a period of six (6) months from the time of placement. Only after the lapse of the period of trial custody shall a decree of adoption be issued in the said country a copy of which shall be sent to the Board to form part of the records of the child.

During the trial custody, the adopting parent(s) shall submit to the governmental agency or the authorized and accredited agency, which shall in turn transmit a copy to the Board, a progress report of the child's adjustment. The progress report shall be taken into consideration in deciding whether or not to issue the decree of adoption.

The Department of Foreign Affairs shall set up a system by which Filipino children sent abroad for trial custody are monitored and checked as reported by the authorized and accredited inter-country adoption agency as well as the repatriation to the Philippines of a Filipino child whose adoption has not been approved.

Sec. 15. *Executive Agreements.* — The Department of Foreign Affairs, upon representation of the Board, shall cause the preparation of Executive Agreements with countries of the foreign adoption agencies to ensure the legitimate concurrence of said countries in upholding the safeguards provided by this Act.

Article IV **Penalties**

Sec. 16. *Penalties.* — (a) Any person who shall knowingly participate in the conduct or carrying out of an illegal adoption, in violation of the provisions of this Act, shall be punished with a penalty of imprisonment ranging from six (6) years and one (1) day to twelve (12) years and/or a fine of not less than Fifty thousand pesos (P50,000), but not more than Two hundred thousand pesos (P200,000), at the discretion of the court. For purposes of this Act, an adoption is illegal if it is effected in any manner contrary to the provisions of this Act or established State policies, its implementing rules and regulations, executive agreements, and other laws pertaining to adoption. Illegality may be presumed from the following acts:

- (1) consent for an adoption was acquired through, or attended by coercion, fraud, improper material inducement;
- (2) there is no authority from the Board to effect adoption;
- (3) the procedures and safeguards placed under the law for adoption were not complied with; and

(4) the child to be adopted is subjected to, or exposed to danger, abuse and exploitation.

(b) Any person who shall violate established regulations relating to the confidentiality and integrity of records, documents and communications of adoption applications, cases and processes shall suffer the penalty of imprisonment ranging from one (1) year and one (1) day to two (2) years, and/or a fine of not less than Five thousand pesos (P5,000), but not more than Ten thousand pesos (P10,000), at the discretion of the court.

A penalty lower by two (2) degrees than that prescribed for the consummated felony under this Article shall be imposed upon the principals of the attempt to commit any of the acts herein enumerated.

Acts punishable under this Article, when committed by a syndicate or where it involves two or more children shall be considered as an offense constituting child trafficking and shall merit the penalty of reclusion perpetua.

Acts punishable under this Article are deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any of the unlawful acts defined under this Article. Penalties as are herein provided shall be in addition to any other penalties which may be imposed for the same acts punishable under other laws, ordinances, executive orders, and proclamations.

Sec. 17. Public Officers as Offenders. — Any government official, employee or functionary who shall be found guilty of violating any of the provisions of this Act, or who shall conspire with private individuals shall, in addition to the above-prescribed penalties, be penalized in accordance with existing civil service laws, rules and regulations: Provided, That upon the filing of a case, either administrative or criminal, said government official, employee or functionary concerned shall automatically suffer suspension until the resolution of the case.

Article V **Final Provisions**

Sec. 18. Implementing Rules and Regulations. — The Inter-country Adoption Board, in coordination with the Council for the Welfare of Children, the Department of Foreign Affairs, and the Department of Justice, after due consultation with agencies involved in child-care and placement, shall promulgate the necessary rules and regulations to implement the provisions of this Act within six (6) months after its effectivity.

Sec. 19. Appropriations. — The amount of Five million pesos (P5,000,000) is hereby appropriated from the proceeds of the Lotto for the initial operations of the

Board and subsequently the appropriations of the same shall be included in the General Appropriations Act for the year following its enactment.

Sec. 20. *Separability Clause.* — If any provision, or part hereof is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected, shall remain valid and subsisting.

Sec. 21. *Repealing Clause.* — Any law, decree, executive order, administrative order or rules and regulations contrary to, or inconsistent with the provisions of this Act are hereby repealed, modified or amended accordingly.

Sec. 22. *Effectivity Clause.* — This Act shall take effect fifteen (15) days after its publication in two (2) newspapers of general circulation.

Approve June 7, 1995