

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS GENERAL & INHERENT JURISDICTION

FOREIGN ADOPTION PETITION No. 19 of 2019

WITH

JUDGE'S ORDER No. 103 OF 2019

MSWC, Asha Sadan, Asha Sadan Marg,]
Umerkhadi, Mumbai 400 009]Petitioner

Vs

1) Francisco Amador Frausto]
an American Nationals]
and (1) Anr]..Prospective Adoptive

Smt. Lalita Jaya Raj for the Petitioner.
Mr. O. Hareendran, Scrutiny Officer of ICSW

CORAM : B. P. COLABAWALLA, J.

DATED :- 20th June, 2019.

P.C. :-

1 This Foreign Adoption Petition is for the adoption of a female minor Rachana born on 11th August, 2017 by U.S. Nationals. The biological mother of the minor Rachana surrendered her child before the Child Welfare Committee, Mumbai on 19th August, 2017 and the safe custody of the said child was given to the petitioner institution on the same day as per the Safe Custody Memo dated 19th

August, 2017 under Section 36 (1) of the Juvenile Justice (Care and Protection of Children) Act, 2015 read with Rule 18(4) of the Model Juvenile Justice Rules, 2016. This Safe Custody Memo can be found at page Nos. 60 to 62 of the petition. The Indian Council of Social Welfare (ICSW) has also tendered their representation which is taken on record and marked "X" for identification.

2. After making due enquiry under Section 38 of the Juvenile Justice (Care and Protection of Children) Act, 2015, the Child Welfare Committee, Mumbai has declared that the proposed minor Rachana is a child legally free for Adoption as on 8th November, 2017. I must mention that due to non availability of three members of the Child Welfare Committee only two committee members had signed on this certificate. Thereafter, the said child was again presented before the Child Welfare Committee for re-affirmation of the earlier free for adoption certificate. This Child Welfare Committee now consisting of three members re-affirmed the earlier certificate declaring the child legally free for adoption as on 30th July, 2018. This Free for Adoption Certificate dated 20th July, 2018 (signed on 30th July, 2018) can be found at pages 63 and 64 of the petition.

3. The affidavit of the authorized representative of the Special Adoption Agency (the petitioner) in support of the adoption of the child is also on record.

4. The Central Adoption Resource Authority (CARA) has issued a No Objection Certificate dated 31st March, 2019 which states that it has no objection to the adoption of this child as per Adoption Regulations, 2017 and Article 17 (c) of the Hague Convention on the Protection of Children and Cooperation in respect of Inter-Country Adoption, 1993.

5. As mentioned earlier, the proposed Adopters are American Nationals residing at Pennsylvania, U.S.A., aged about 38 and 39 years respectively. They have been married for the past 11 years (20th October, 2007) with their biological sons, aged 8, 6 and 3 years respectively. The birth certificates, health and lab reports and consents are on record at pages 27,50, 110 to 112.

6. The motivation letter of the proposed Adopters is also on record and it states that they have been married for about ten years and have three biological children. They have also discussed the possibility of adopting and consequently they decided to add to their

family another child through the process of adoption. This motivation letter can be found at page Nos. 9 and 10. The passport copies and the joint photograph of the proposed adopters are also on record.

7. The health report of the proposed Adopters dated 30th August, 2018 states that they have shown no symptoms of either physical or mental disease or any physical or mental disease or physical or mental disease of physical incapacity detrimentally affecting their fitness to have the custody and educate the minor whom they proposed to adopt. Their HIV and Hepatitis “B” test report certify the case as negative. This report can be found at page Nos. 185 to 205.

8. As far as the financial condition of the adoptive parents is concerned, the prospective adoptive father is working as an Assistant Pastor of Highland Baptist Church since 18th May, 2014 and his annual base salary is 55,350 USD and his annual salary slips including housing allowance, his employment/salary certificate and salary slips are on record at page Nos. 69, 79 to 85. As far as the prospective adoptive mother is concerned, she is working as a Coordinator of Highland Baptist Church since 7th May, 2018 and her

annual salary is 16,300 USD. Her employment/salary certificate and salary slips are also on record. The proposed Adopters Income-tax Certificate for the years 2016, 2017 and 2018 are also on record and can be found at page Nos. 86 to 94 respectively. The proof of residence, financial statement and bank references are also placed before me along with the Child Care Arrangement Plan.

9. The proposed adoptive mother's brother and sister-in-law have also executed a child security letter to take care of the minor child in case of any unforeseen mishap to the proposed Adopters. This child security letter can be found at page Nos. 102 to 104 respectively.

10. The home study reports dated 16th July, 2018 and 6th September, 2018 issued by the Authorities of America World Adoption, Pennsylvania, U.S.A. are also on record and inter alia state that the proposed Adopters are very loving, caring and compassionate individuals who have a genuine interest in building their family through adoption. They demonstrate stability in their employment, family and community and appear to have the physical, mental, emotional and financial stability for successfully raising an additional child. After all this assessment, the Agency

approves and recommends them to adopt a child with special needs from India upto the age of three years.

11. The psychological evaluation report by the Licensed Psychologist dated 2nd April, 2018 is also on record, which states that the Licensed Psychologist found them to be free of any mental conditions that would make them mentally unstable, unable to function or prohibit their ability to be parents.

12. The Article 5 letter dated 1st May, 2019 from the Embassy of the United States of America and provisional approval notice dated 1st October, 2018 from the Department of Homeland Security is on record (page Nos. 160 and 165).

13. The medical examination report of the minor Rachna dated 22nd January, 2019 states that she is a case of congenital hypothyroidism. She was born to a HIV positive mother. At present, development appears commensurate with age. However, owing to moderately severe generalized hypotonia and history of seizures further evaluation will be required. She is a special needs child. This medical examination report has been countersigned by the proposed Adopters and can be found at page 212 to 218.

14. The letter of acceptance executed by the proposed Adopters dated 19th April, 2019 for a special needs child is also on record at page No.12. The HIV report of the proposed minor dated 19th January, 2019 certifies the case as non-reactive. The post-card size photograph of the minor is also on record.

15. As regards the change of name, the proposed Adopters desire that the minor Rachna be renamed as “**Amalia Anne Frausto**”. It is accordingly so ordered.

16. The declaration of consent and willingness and undertakings by the prospective adoptive parents are on record at page Nos. 173 to 183. The undertaking dated 8th April, 2019 from the Authorized Foreign Adoption Agency “America World Adoption”, Pennsylvania, U.S.A., is at page Nos. 168 to 171. The copy of the General Power of Attorney dated 19th April, 2019 in favour of the authorized functionary of the petitioner-institution is on record at page Nos. 56 to 58.

17. The Adoption Agency's (M.S.W.C. Asha Sadan, Mumbai) recognition from the Women & Child Development, Government of

Maharashtra to place children in adoption is valid for a period up to 31st December, 2018. However, it is stated before me that the petitioner institution has applied for a renewal and in the interregnum has filed this Adoption Petition under the provisions of Regulations 24 (5) of the Adoption Regulations 2017.

18. Having gone through all the documents that have been placed before me and after perusing the record, I think it would be in the interest of the child if she is adopted by the proposed Adopters. I therefore do not find any impediment in granting the reliefs sought for in the petition.

19. In view of this, the petition is allowed in terms of prayer clause (a), (b) and (c) which read thus : -

(a) This Hon'ble Court may be pleased to appoint the Adopters as adoptive parents of the person of female minor RACHNA now in the care and custody of the petitioners; MSWC Asha Sadan, Asha Sadan Marg, Umerkhadi, Mumbai 400 009;

(b) That the Adopters be granted leave by this Hon'ble Court to remove Rachna outside the jurisdiction of this Hon'ble Court; and

(c) That the petitioners/Adopters be granted leave to apply to the Municipal Authorities to issue Birth Certificate of the minor Rachna showing the first

Adopter FRANCISCO AMADOR FRAUSTO as the adoptive father and his wife the second Adopter TORI ANN FRAUSTO as the adoptive mother respectively.

20. The Judge's Order is also separately signed.

21. It is directed that the petitioner institution should obtain a further undertaking from the adoptive parents that they shall not give the minor child for further adoption, without the prior leave of this Court. Once this undertaking is obtained, the same shall be filed on the record of this Court.

22. The Adoption Petition is disposed of in the aforesaid terms.

(B.P. COLABAWALLA, J.)

Radhakishan
S. Ladda
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