

13th CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
THIRD REGULAR SESSION)

7 JAN 15 1995

SENATE BILL No. 2565

APPROVED



Introduced by Senator Aquilino Q. Pimentel, Jr.

EXPLANATORY NOTE


Republic Act 8043, otherwise known as "An Act Establishing the Rules to Govern Inter-Country Adoption of Filipino Children, and for Other Purposes", was enacted on 07 June 1995. The Law was enacted under the guiding principles of the Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption. The primary purpose of the Hague Convention is to require a process which ensures that inter-country adoption of a child is determined to be in the child's best interests, and that all measures are taken to prevent abduction, sale or traffic of children.

This bill seeks to institute reforms in the process of inter-country adoption, to make it more responsive to the changes in the concept of international adoption.

One of the features of this legislative measure is the removal of the age requirement for the adopter, i.e. to be at least twenty seven (27) years old at the time of the adoption. It likewise seeks to re-name the Inter-Country Adoption Board as Inter-Country Adoption Authority (ICAA), and introduces structural changes in the ICAA.

Each Filipino child deserves a family that will protect his/her best interests. It is therefore the policy of the State to find an adoptive family for any child found legally free for adoption and to establish an efficient system for the implementation thereof.

Hence, the immediate passage of this bill is earnestly requested.



AQUILINO Q. PIMENTEL, JR.

13th CONGRESS OF THE)
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TO THE SECRETARY

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SENATE BILL No. 2565 RECEIVED BY: Tomy

Introduced by Senator Aquilino Q. Pimentel, Jr.

AN ACT AMENDING CERTAIN PROVISIONS OF REPUBLIC ACT NO. 8043, OTHERWISE KNOWN AS AN ACT ESTABLISHING THE RULES TO GOVERN INTER-COUNTRY ADOPTION OF FILIPINO CHILDREN, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Article I, Section 2 of RA 8043 is hereby amended and shall read as follows:

"Section 2. Declaration of Policy.- It is hereby declared the policy of the State to provide every neglected and abandoned child with opportunities for growth and development. Towards this end, efforts shall be exerted to **IMMEDIATELY** 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,) **OFFERS THE ADVANTAGE OF A PERMANENT FAMILY TO A CHILD FOR WHOM A SUITABLE FAMILY CANNOT BE FOUND IN THE PHILIPPINES**, 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.*"

SECTION 2. Article I, Section 3 of RA 8043 is hereby amended and shall read as follows:

"Section 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 **EIGHTEEN (18)** (fifteen (15) years of age unless sooner emancipated by law.)

C) AUTHORITY REFERS TO THE INTER-COUNTRY ADOPTION AUTHORITY

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

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

F(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.

G(f) Legally-free child means a child who has been voluntarily or involuntarily committed to the Department **OR TO A DULY LICENSED AND ACCREDITED CHILD-PLACING OR CHILD-CARING AGENCY, FREE OF THE PARENTAL AUTHORITY OF HIS/HER BIOLOGICAL PARENT(S) OR GUARDIAN OR ADOPTER(S) IN CASE OF RESCISSION OF ADOPTION**, in accordance with the Child and Youth Welfare Code.

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

I(h) Board refers to the **BOARD OF THE Inter-country Adoption (Board) AUTHORITY**.

J) LIAISON SERVICES REFER TO THE COLLABORATION OF ACTIVITIES / SERVICES OF FACILITATING AND PLACING CHILD FOR ADOPTION BY A CHILD CARING / PLACING AGENCY WITH A FOREIGN ADOPTION AGENCY, AS APPROVED BY THE BOARD."

SECTION 3. Article II, Section 4 of RA 8043 is hereby amended and shall read as follows:

"Section 4. The Inter-Country Adoption **AUTHORITY (Board)**.- There is hereby created the Inter-Country Adoption **AUTHORITY (Board)**, hereinafter referred to as the **AUTHORITY (Board)**, to act as the central authority in matters relating to inter-country adoption. It shall act as the **QUASI-JUDICIAL AND** policy-making body for purposes of carrying out the provisions of this Act, in consultation and coordination with the Department, the different **GOVERNMENT AND NON-GOVERNMENT** child-care and placement agencies, **FOREIGN** 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 TO PROVIDE LIAISON SERVICES FOR INTER-COUNTRY ADOPTION** and collaborate **AND/OR COORDINATE** with **FOREIGN ADOPTION AGENCIES** (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."**

SECTION 4. Article II, Section 5 of RA 8043 is hereby amended and shall read as follows:

"Section 5. Composition of the Board OF THE AUTHORITY. -- (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:) The AUTHORITY SHALL HAVE A Board (shall) TO be composed of A REPRESENTATIVE OF THE Secretary of the Department (as ex-officio Chairman,) WHO SHALL HAVE THE QUALIFICATIONS OF AN UNDERSECRETARY, 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 ONE (1) representative from non-governmental organizations engaged in child-caring and placement activities, BUT NOT ACTIVELY ENGAGED IN THE MANAGEMENT OF SAID ORGANIZATION, AND ONE (1) REPRESENTATIVE FROM A NON-GOVERNMENT ORGANIZATION INVOLVED IN CHILDREN'S WELFARE. THE MEMBERS OF THE BOARD SHALL(to) be appointed by the President for a (non)renewable term of (six (6)) FOUR (4) years. HOWEVER, NO BOARD MEMBER SHALL SERVE FOR MORE THAN TWO CONSECUTIVE TERMS: (Provided, That) The members of the Board shall receive a per diem allowance of (One thousand five hundred pesos (P1,500.00)) FIVE THOUSAND PESOS (P 5,000.00) for each meeting attended by them: Provided, further, (That no compensation shall be paid for more than four (4) meetings a month.) THAT THE BOARD MAY DETERMINE ADDITIONAL COMPENSATION FOR ITS MEMBERS FOR OTHER TASKS GIVEN TO THEM.

THE MEMBERS SHALL CHOOSE FROM AMONG THEM THE CHAIRMAN OF THE BOARD.

SECTION 5. Article II, Section 6, paragraph b of RA 8043 is hereby amended and shall read as follows:

"Section 6. Powers and Functions of the Board.- The Board shall have the following powers and functions:

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

c) **X X X "**

M) TO APPOINT THE EXECUTIVE DIRECTOR OF THE SECRETARIAT

N) TO EXERCISE CONTROL AND SUPERVISION OVER THE ADMINISTRATIVE FUNCTIONS OF THE SECRETARIAT

SECTION 6. Article III, Section 7 of RA 8043 is hereby amended and shall read as follows:

“Section 7. Inter-Country Adoption as the Last Resort.- The **AUTHORITY (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 **AUTHORITY (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, **UNLESS THE ADOPTION TAKES PLACE WITHIN THE FAMILY UP TO THE SIXTH (6th) CIVIL DEGREE OF CONSANGUINITY, OR UNLESS THE ADOPTION IS AN EXCEPTIONAL CASE, AS DETERMINED BY THE BOARD.**(: 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.)”

SECTION 7. Article III, Section 9, paragraph a of RA 8043 is hereby amended and shall read as follows:

“Section 8. Who May be Adopted.- Only a legally free child may be the subject of inter-country adoption. **IN CASE OF VOLUNTARY COMMITMENT, THE CHILD SHALL BE PLACED IMMEDIATELY FOR ADOPTION. PROVIDED, HOWEVER THE SURRENDERING PARENT RECEIVED APPROPRIATE COUNSELING AND HAS RELINQUISHED THE CHILD AND SIGNED THE DEED OF VOLUNTARY COMMITMENT.** In order that such child may be considered for placement, the following documents must be submitted to the Board:

X X X X

SECTION 8. Article III, Section 9, paragraph a of RA 8043 is hereby amended and shall read as follows:

“Section 9. Who May Adopt.- Any 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 OF LEGAL AGE, (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 adaptor is the parent by nature of the child to be adopted or the spouse of such parent;**”

SECTION 9. Article III, Section 10 of RA 8043 is hereby amended and shall read as follows:

“Section 10. Where to File Application.- An application to adopt a Filipino child shall be filed **WITH THE AUTHORITY** (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 **AUTHORITY (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 adopted children above ten (10) years of age **WHO ARE LIVING WITH THEIR PARENTS, OR OVER WHOM PARENTS EXERCISE PARENTAL AUTHORITY;**(, in the form of sworn statement);
- d) Physical, medical and psychological evaluation by a duly licensed physician and psychologist **OR PSYCHIATRIST;**
- 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;
- I) HOME STUDY REPORT; AND**
- J) CERTIFICATE OF GUARDIANSHIP**

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

SECTION 10. Article III, Section 11 of RA 8043 is hereby amended and shall read as follows:

Section 11. Family Selection/Matching.- No child shall be matched to a foreign adoptive family unless it is satisfactorily shown that **NO LOCAL ADOPTIVE FAMILY IS AVAILABLE AT THE TIME OF THE MATCHING CONFERENCE. WHEN THE PLACEMENT AUTHORITY IS TRANSMITTED TO THE CONCERNED COURT OF THE ACCREDITED FOREIGN ADOPTION AGENCY** (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.

SECTION 11. Article III, Section 13 of RA 8043 is hereby amended and shall read as follows:

"Section 13. Fees, Charges and Assessments.- Fees, charges, and assessments collected by the **AUTHORITY** (Board) in the exercise of its functions shall be used solely to process applications for inter-country adoption, and to support the **CHILD CARING AGENCIES AND THE** activities of the **AUTHORITY** (Board)."

SECTION 12. Article III, Section 14 of RA 8043 is hereby amended and shall read as follows:

"Section 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 counselling 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 **AUTHORITY (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 AUTHORITY SHALL, IN CONSULTATION AND COORDINATION WITH (T)the Department of Foreign Affairs, ISSUE THE GUIDELINES (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. **THE DEPARTMENT OF FOREIGN AFFAIRS SHALL, HOWEVER, SET UP A SYSTEM FOR** (as well as) the repatriation to the Philippines of a Filipino child whose adoption has not been approved."

SECTION 13. Article IV, Section 17 of RA 8043 is hereby amended and shall read as follows:

"Section 17. Public Officers as Offenders.- Any government **AND NON-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."

SECTION 14. All laws, decrees, executive orders, proclamations, rules and regulations, or parts thereof inconsistent herewith are hereby repealed or modified accordingly.

SECTION 15. Separability Clause. - If any provision of this Act is held invalid or unconstitutional, the other provisions not affected hereby shall remain valid and subsisting.

SECTION 16. This Act shall take effect fifteen (15) days after its publication in at least two (2) national newspapers of general circulation.

Approved,