

**SLOBODAN BOBANOVIC AND DIANNE ELIZABETH CONNUNGHAM
BOBANOVIC, PETITIONERS, VS. HONORABLE SYLVIA P. MONTES (IN
HER CAPACITY AS MINISTER OF SOCIAL SERVICES AND
DEVELOPMENT), RESPO...**

G.R. No. 71370. January 31, 1987

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

ALAMPAY, J.:

In our decision in this case promulgated on July 7, 1986 and which is now the subject of the motion for reconsideration filed by the Ministry of Social Services and Development, this Court emphasized that in adoption cases, the interest and welfare of the child is of paramount consideration and that "every reasonable intendment should be sustained to promote and fulfill these noble and compassionate objectives of the law (Malkinson vs. Agrava, 54 SCRA 66, and other cited cases) and the law should not be made, as instrument to impede the achievement of a salutary policy." (Duncan vs. CFI of Rizal, L-30576, 69 SCRA 298).

Applying the aforecited judicial guidelines, this Court directed the present Ministry of Social Services and Development "to forthwith issue without undue delay, the requisite travel clearance certificate in favor of herein petitioners' adopted child, Adam Christopher Bobanovic." In our decision, we stated that "all that MSSD had to do was to use a little of its time to verify the correctness of the case study report, prepared and submitted by the Social Worker who acted upon instruction of the court below."

Respondent's motion for reconsideration of the decision in this case, dated August 5, 1986, although filed late, in the interest of justice, was nevertheless admitted under our resolution of September 5, 1986. In said motion, public respondent stressed the existence of the 1981 Memorandum of Agreement between the State and Territory Adoption Authorities of Australia and the Ministry of Social Services and Development of the Philippines. Respondent Minister therein pointed out that under the stated Memorandum of Agreement, it has been agreed among others, the following:

"x x x

x x x

x x x

"1.4. The adoption authorities in both countries will jointly approve of prospective adopting parents and the selection of particular adoptive parents for a particular child. x x x." (Rollo, p. 140)

Respondent Minister further averred that certain significant procedures have been accepted and agreed to be observed, such as:

"x x x x x x x x

"4.1. Any person or persons having their ordinary place of residence in an Australian State or Territory, who wish to adopt a child from the Philippines will apply to the Director of the appropriate Australian State or Territory investigated; where he is satisfied that the applicants are fit and proper persons to adopt a child from the Philippines, he will cause the preparation of a detailed Family Study and will act as intermediary and forward the Family Study to the Philippines for consideration. Only family studies presented by an appropriate Australian State or Territory Adoption Authority to the Philippine Ministry of Social Services and Development will be considered.

"4.2. In any application for approval, as persons fit and proper to adopt a child from the Philippines, the following will be conditions precedent to the approval of the application by the Australian State or Territory Adoption Authorities:

"(a). Applicants must have attained the ages specified in the appropriate laws of both countries and be in a position to support and care for their family.

"(b) The State or Territory Adoption Authority investigating an application will confirm that applicants have no criminal record or else make appropriate comment on that record." (Rollo, pp. 141-142)

The Court is constrained to consider the aforestated matters. We note the assertions of the respondent Minister which appear uncontroverted in petitioners' reply, that "the preparation of the Family Study report from the home country on the prospective adopters is a requirement in this Memorandum of Agreement with Australia. x x x." (Rollo, p. 142).

The Court does not say nor do We entertain a belief that the herein petitioners are in any way disqualified to be adopting parents in their home State or ordinary place of residence. What the Court simply wishes to express is that it would be more prudent and desirable to require that the petitioners herein submit themselves to a Family Study Report in their home country so that if a favorable report is thereafter submitted to the Ministry of Social Services and Development, then the corresponding travel certification should then forthwith issue, in implementation of the judgment of adoption already rendered. This step, if taken by petitioners will lead to the removal of the basic reason for the reluctance and apprehension of the public respondent Minister who, understandably, is concerned that the welfare of the adopted child might later be prejudiced — a possibility that may arise in the event that the latter's adoption is not sanctioned or recognized by Australia where petitioners are citizens and residents of.

It may not be amiss to state that the petitioners, in their Coment to the motion for reconsideration, principally expound on the finality of the decision in the adoption case and that the working arrangement between the adoption authorities of Australia and the Philippines does not have the effect of law. But even as petitioners deplore the delay in the issuance of the certificate of clearance to travel, they, however, fail to tender an explanation or state any reason whatsoever for their apparent reluctance to submit themselves to a Family Case Study in their home State.

While the Court takes the view that the decision in the adoption case should not be disturbed and that all the technicalities that were raised against the adoption should yield to the ultimate end of promoting the best interest of the adopted child, the same guiding principle should be applied in the matter of the issuance of the travel clearance certificate. This subsequent aspect of the adoption which was raised by respondent Minister was brought only lately to the Court's attention. Thus, it becomes relevant and important to extend consideration to the aforementioned Memorandum Agreement entered into in 1981 by our country and Australia.

It is well worth considering that the welfare of the adopted child can be truly protected if there is at least an

assurance that the home State of the petitioners has undertaken a family case study concerning them. As it would be but a simple thing for petitioners to submit to a family case study report, the Court finds it difficult to perceive the reason for petitioners' apparent adamant attitude in declining to do so. As petitioners profess their desire to extend to their adopted child the warmth of a parent's love, the comforts of a caring home and the material provision he needs, their sincerity in this regard can best be manifested by laying aside any possible inconvenience on their part or searching for legal technicalities. Whether or not the referred Memorandum Agreement has the force and effect of law should be of least consideration to the petitioners if they are truly disposed to do their part to expedite the travel of their adopted child to their country. The best solution would be for them to accept and submit themselves to a family case study which should not be at all a difficult thing for them to do.

In the same way that this Court took to task the Ministry of Social Services and Development for being, paradoxically, "overly concerned over its claimed exclusive prerogative to conduct the case study work instead of placing more importance on the possible prejudicial effects of its refusal on the welfare of the child", a similar rebuke may be fastened on the petitioners for their seemingly adamant attitude and reluctance to submit themselves to a family case study report, which if favorable to them would quickly remove the last reasonable obstacle for the issuance of the subject travel clearance certificate. It will banish the apprehension and any misgiving on the part of the local authorities concerned that the adopted child might be confronted with unexpected problems seriously prejudicial to his welfare, should the latter's adoption be not sanctioned or recognized by the State where petitioners reside and are citizens of.

WHEREFORE, and in the light of the facts and circumstances hereinabove discussed, the dispositive portion of our judgment in the instant case directing the issuance of the requisite travel clearance certificate in favor of the child, Adam Christopher Bobanovic, is hereby **SUSPENDED** and **DEFERRED** until after petitioners shall have submitted themselves to a Family Case Study in their home State of Victoria, Australia where they are said to be residing. Upon furnishing herein respondent Minister of Social Services and Development with the corresponding official report on said Family Case Study and if such is favorable to the petitioners herein, then the requisite travel clearance certificate for the adopted child, Adam Christopher Bobanovic, should thus be issued by the office of the public respondent Minister as previously decreed.

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Paras, Padilla, and Bidin, JJ., concur.

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