

FORM NO.HCJD/C

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CASE NO.: W. P. NO. 854 OF 2011

MISS NANCY RUTH BANCY

VS

DISTRICT JUDGE, ISLAMABAD AND ANOTHER.

DATE OF HEARING: 31.03.2011

**PETITIONER BY: Barrister Faisal Khan Toru,
Advocate.**

**RESPONDENT BY: Barrister Ehsan Qazi, Advocate for
parents of the minor.**

MUHAMMAD ANWAR KHAN KASI, J. :- The

petitioner has prayed for permission to take the minor
namely Amrina Masih, a Christian child to USA for the
purposes of immigration and adoption.

2. According to the petitioner, she took care of a
child Amrina Masih with the permission of her parents
and got a proper order from the Court for her
appointment as guardian of the minor vide order dated
19.01.2011.

3. After being appointed as guardian of the
minor, she applied for the immigration of the child to US
Embassy and was asked by the said Embassy for the

29

- 2 -

inclusion of word "adoption" in the order dated 19.01.2011.

4. Initially, she moved a review petition before the Senior Civil Judge, Islamabad for amending the order dated 19.01.2011 by incorporating the word "adoption" and on refusal vide order dated 08.2.2011 approached the learned District Judge, Islamabad, through an appeal for amendment in the said order, which was rejected on the ground that the child shall remain, the child of her parents and a Pakistani subject and by incorporating the word adoption, the concept of real parentage shall be negated.

5. Thereafter she filed the present petition and submitted that she had decided to adopt a female Christian child and had carried out an adoptive Home study for adoption of a female child under U.S. Law. It is further stated that after completing all the requirements she became qualified for adoption of a female child and she is financially sound, has her own residence and well placed to accommodate and maintain an adopted minor child. It is mentioned that during this process she contacted different orphanages and came into contact with the present respondent family, who willingly handed over the child to the care and custody of present petitioner. In this regard, a proper deed of declaration of adoption was also executed between the parties on

7

- 3 -

25.10.2010 and she was appointed guardian of the minor and applied for her US. Immigration Visa, whereupon she was directed to get the word "adoption" added in the guardianship certificate, which was refused by the learned Senior Civil Judge, as well as by the learned District Judge, Islamabad, hence this petition.

6. Learned counsel for the petitioner in support of contentions, relied upon the Indian case laws reported in "AIR 1984 SC 469" and 2005(3) KLT 57", wherein it is held that an appointed guardian, with the permission of the Court can remove the child out of the country and take it to her/his own country for the purpose of adoption in accordance with law of his/her country.

7. Notice of this petition was given to the parents of the child. Mr. Ehsan Qazi, Barrister appeared on their behalf and showed no objection on passing of such order.

8. Heard and record perused.

9. Admitted fact of the case is that the petitioner took care of the child and custody with the permission of her parents and thereafter through a legal process, she was appointed as a guardian by the competent Court of law. She, therefore, wanted to apply for the immigration of the child to her own country for adoption and also because the minor may get proper treatment for her ailments.

27

- 4 -

10. The US Embassy has its own rules for granting immigration visa and the requirement of law is that word "adoption" be mentioned in the order dated 19.01.2011 of guardianship.

11. Since there is no objection from any quarter about her guardianship and removal of the child to the U.S.A, the requirement of immigration must be fulfilled. Even otherwise, the welfare of minor is a prime importance and her going to U.S.A for better care and treatment would be in her own interest. The parents have no objection upon it, rather they happily handed over the custody of the child to the petitioner via execution of a deed of adoption dated 25.10.2010.

12. It is pertinent to mention over here that the minor Amrina Masih is a born Christian and would not be governed by the Muslim Personal Law. It is certain that there is no law for adoption of child in Pakistan, but in the United State of America, there is a law of adoption. In fact the preamble of Hague Adoption Convention recognizes that child should grow up in a family environment, in an atmosphere of happiness and understanding and on 1st of April 2008, this went into force for the U.S. This convention establishes important standards and safeguards to protect inter-country adoptions.

A
/

- 5 -

13. Inter country adoption is governed by both the laws of the country in which the child lives and the country in which the adoptive parents live. Under the US law there are distinct country adoption processes the Hague Convention Process and the non-Hague Convention Process. Adoption is defined as judicial or Administrative Act that establishes a permanent legal parent-child relationship between a minor and an adult who is not already the minors legal parent and terminates the legal parent-child relationship, between the adoptive child and any former parents.

14. The statistics show that during the last decade two hundred thousand (200000) children are adopted every year. According to the adoptive statistics by Inter-country Adoption Bureau of Counselor affairs U.S. Department of State following number of children were adopted from Pakistan by the U.S citizens.

Year	Number of children
2010	41
2009	33
2008	47
2007	35
2006	47
2005	22
2004	31
2003	24
2002	25
2001	24
2000	20
1999	30
1998	24
1997	13

- 6 -

1996	17
1995	02

15. The U.S. Child Citizenship Act, 2000 allows a new child to acquire American Citizenship automatically when he or she enters the U.S. as lawful permanent resident, however this part is not applicable to children brought from Pakistan under an immigrant visa as there are no adoption in Pakistan. There is no Central Government Adoption Authority in Pakistan and Pakistan is not a Hague Adoption Convention country and no child is adopted here, therefore, guardianship proceedings are filed in the family courts.

16. Now after the appointment of petitioner as guardian, she has got every lawful right to keep the child with her after proper consent of minor's real parents. She wants to keep the child with her in USA and welfare of the minor also demands her better care and treatment.

17. Since there is no Inter-country Adoption between Pakistan and U.S, the minor will enter U.S. on immigration visa and shall be adopted over there according to the US laws.

15. In view of that, I am of the opinion that the children after going through all the process of guardianship should be permitted to accompany their lawful guardians. Especially when the parents have also no objection to the removal of minor to a foreign country

2
/

- 7 -

in connection with adoption. Muslim Laws are different, but in the present case, the minor is a Christian and her parents have given the said permission.

16. The petition is therefore, allowed and the petitioner is permitted to take the minor to the United States of America for the purpose of immigration and adoption. The required amendment is directed to be made and the original guardianship order dated 19.01.2011 shall be read as such.

1
(MUHAMMAD ANWAR KHAN KASI)
JUDGE

*AR.ANSARI /

ANNOUNCED IN OPEN COURT ON 01.04.2011.

JUDGE)

Approved for reporting.

Blue chip added,
05/4/11
Issued on 07-04-11