

1 **FOR PUBLICATION**

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8 **IN THE SUPERIOR COURT**
9 **OF THE**
10 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

11 **IN RE THE MATTER OF THE ADOPTION) FCD AD CIVIL ACTION NO. 06-0147**
12 **OF D.D.V. and A.D.V.,)**

13 **Minor Children,)**

14 **By:)**
15 **ERNEST JACKSON STRANGE AND)**
16 **THELMA VILLAMOR STRANGE,)**

17 **Petitioners.)**

ORDER DENYING PETITION FOR
ADOPTION

18 This matter came on for an adoption hearing on April 24, 2006. Ernest Jackson Strange
19 and Thelma Villamor Strange (“Petitioners”) appeared in court and were represented by
20 Stephen J. Nutting, Esq. The minor children and their biological parents, Sotero I. Villamor
21 and Noralyn D. Villamor, were also present in court. Based on the testimony proffered at the
22 hearing, the Court ruled from the bench DENYING the *Petition for Adoption* for the reasons
23 set forth below.

24 The Petitioners, husband and wife, are U.S. citizens and residents of Saipan. The adoptive
25 mother is the maternal aunt of the minor children. The natural parents, husband and wife, are
26 non-U.S. citizens who have resided in Saipan for one year. The minor children were born in
27 Manila, in the Philippines on June 12, 1996 (D.D.V.) and November 5, 1997 (A.D.V.). The
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1 children have resided in Saipan since December of 2004, when they arrived as tourists to visit
2 Petitioners for the Christmas Holiday.

3 The natural parents filed consent to the adoption with the Court and the minors' natural
4 mother, Noralyn, testified at the hearing. During the testimony, the Court inquired as to why
5 the natural parents were terminating their parental rights. The natural mother informed the
6 Court that it was her belief that her children would be afforded a better future as the adopted
7 children of her sister-in-law and brother-in-law, the Petitioners. Noralyn also expressed
8 concern about the children's living conditions in the Philippines and the natural parents'
9 inability to send the children to college due to financial constraints.

10 In light of the circumstances, the Court finds the termination of the natural parental rights
11 inappropriate for numerous reasons. First, the purpose of the Commonwealth adoption law is
12 to ensure parties act in the best interest of the children, not circumvent immigration law.
13 Second, the Court is sincerely concerned about public policy and the social ramifications that
14 stem from abusing adoption laws in this manner and must now make a strong statement about
15 the practice that has played out for many years in the CNMI.

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18 **A. The Intended Purpose of the Commonwealth Adoptions Law 8 CMC §§ 1401**
19 ***et seq.*, is to Act in the Best Interest of the Children, Not Circumvent**
20 **Immigration Procedures.**

21 Guided by the statute that governs adoption procedures, the Court finds it is not in the "best
22 interest of the child" to grant this adoption. 8 CMC §§ 1401 *et seq.* The effect of a final
23 decree of adoption is to abolish the parental rights and responsibilities of the natural parents,
24 and terminate all legal relationships between the adopted individual and their relatives.¹ 8
25 CMC § 1412(a)(1).

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28 ¹ In many cases, grandparents adopt their grandchildren so the children are provided health insurance benefits.
Often, the natural parents remain in the lives of the children. In the CNMI, this is called an extended family, and in
most cases, all were living together long before a petition for adoption was filed.

1 An adoption will be granted only if the Court is satisfied that it is in the best interest of the
2 child. 8 CMC § 1403. As the parent-child relationship is natural and fundamental, the
3 termination of the relationship should require proof beyond a preponderance of evidence.
4 *Matter of Adoption of Olopai*, 2 N.M.I. 93, 100 (1991). Thus, the court must be provided with
5 clear and convincing evidence that the termination of parental rights would be in the best
6 interest of the child. *Id.*

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8 When determining the best interest of the child, the Court considers factors that comprise
9 and form the basis of a family unit. Those factors, or paramount criteria, include: (1) The
10 fundamental relationship of the child and the biological parents; (2) The interests of the
11 adopting parents; (3) The child's age; (4) The extent of the bond, or potential bond; (5) The
12 fitness of the biological parent, taking into account whether the child has been abandoned,
13 neglected, subjected to cruelty, or the parent is a habitual user of drugs or alcohol, has been
14 convicted of a felony, or is generally unfit to be a parent; (6) The potential bond between the
15 adoptive parent and the child; (7) The ability of the biological parent to provide the child with
16 adequate and proper love, care, attention, and guidance; and (8) The ability of the adoptive
17 parents to provide love, care, attention, and guidance. *Id.* at 103-04. Even in consideration of
18 these factors, the Court has historically reserved the termination of parental rights for severe
19 situations, such as child abuse, neglect, or abandonment.
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21 Neither the natural parents nor the Petitioners have provided convincing testimony as to
22 why it would be in the best interest of the children to terminate the parent-child relationship at
23 this time. There was no indication of child abuse, neglect, or abandonment. Nor was the Court
24 presented with evidence of drug or alcohol abuse by either parent.
25

26 Both the Petitioner and the natural mother testified that the children's living condition in
27 the Philippines was poor. However, no evidence was provided to support these subjective
28 observations. What is poor to one person may be perfectly suitable to another. Further, the

1 Court cannot take judicial notice of the poor living conditions of these children just by the
2 testimony of the Petitioners and the natural parents. Evidence and proof must be furnished to
3 the Court. Therefore, in the absence of evidence to the contrary, nothing supports the
4 conclusion that these children were neglected, abused, or deprived of necessities such as
5 shelter, food, or an education.
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7 Quite the contrary, the natural parents appear to deeply love and care for the children. The
8 natural mother testified that she and her husband have lived and worked in Saipan for the past
9 year as contract non-resident workers. Income earned in Saipan was sent to the Philippines to
10 support their children, who resided with their grandmother. Although the family may have
11 been separated for some duration of time, the record indicates they were reunited in Saipan
12 over a year ago when the children arrived in the last week of December, 2004. Considering the
13 children's age, the family bond was likely not weakened during the separation. Presumably,
14 the bond between the ten-year-old and the nine-year-old children and the parents continues to
15 grow, as the entire family has resided together in Saipan for the past year. When natural
16 parents have such a healthy, loving bond with their children, financial reasons alone do not
17 justify terminating the parental rights naturally bestowed to the biological parents.
18

19 The natural mother testified that an adoption would likely provide her children with a better
20 education and a more comfortable life. However, the benefits of financial security can be
21 gifted to the child regardless of who has legal parental rights. Surely, the Petitioners, who earn
22 a gross annual income of \$160,000.00-\$170,000.00, can afford to help support the children,
23 whether the children live in Saipan or the Philippines, and regardless of whether their
24 relationship remains as aunt and uncle or is changed to adoptive parents.
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26 As such, this Court does not find it necessary to terminate the parental rights for financial
27 or education reasons. Although financial constraints are taxing on family relations, in the
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1 absence of abuse, neglect, or deprivation, it remains in the best interest of the children to
2 remain under the guidance and care of their natural parents.

3 That said, the only other benefit the children would receive through the adoption is a
4 change in their immigration status. In the recent past, the Court has received an upsurge of
5 adoption petitions from petitioners who wish to adopt a family member from another country.
6 The traditional plot entails a minor arriving in Saipan as a tourist, and a year later, a relative
7 who is a long-term resident, a U.S. citizen, or is married to a U.S. citizen, petitions to adopt the
8 minor.
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10 Sham adoptions are not new to Saipan. Generally, a sham adoption takes place when a
11 close relative seeks to adopt a minor, usually a niece or nephew, whose natural parents are still
12 alive and likely cohabitating with the adoptive parents. Am. Jur. Aliens. § 385. During the
13 adoption hearing, no evidence of a meaningful objective is provided to the Court that the
14 relationship between the natural parent and child is altered by the subsequent adoption. *Id.* In
15 most cases, the adoptive parents cease to reside with the adoptive child and the natural parents
16 for extended periods. *Matter of Marquez*, 20 I. & N. Dec. 160, 164 (BIA 1990). In Saipan, the
17 trend is to bring minors to Saipan as tourists with the intent to file an adoption petition a year
18 later. In the interim, the minor's parents likely have obtained contract work on the island, and
19 thus, continue to cohabitate with their visiting children.
20

21 Concerned about this trend, the Court would like to emphasize 8 CMC § 1420, which
22 reads: “[A] person commits the offense of immigration fraud when he or she adopts another or
23 intentionally induces a person to adopt another for the purpose of gaining immigration benefits
24 by either the person to be adopted or the person to adopt, under the Commonwealth or United
25 States law.” 8 CMC § 1420(c). This code is applicable to parents and close relatives seeking
26 to adopt a family member, such as a niece or nephew. In the absence of abuse, neglect,
27 abandonment, or orphan status, from which these children do not suffer in the instant case, it
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1 appears as though the natural parents are terminating their parental rights in order for their
2 children's immigration status to change. This constitutes the sidestepping of immigration
3 laws, and is a violation of the laws of the Commonwealth and the United States.

4 Likewise, the United States Congress has expressed concern over sham adoptions.
5 Congress has responded with specific safeguards in the Immigration and Nationality Act to
6 prevent the granting of visa petitions in the case of sham adoptions that were intended to
7 circumvent immigration laws and enter the United States. 8 U.S.C.A. § 1101(b)(1). The
8 requirements for an adopted child to obtain a visa were intended to prevent abuse through *ad*
9 *hoc* adoptions made only for the purpose of circumventing immigration laws. 103 Cong. Rec.
10 14, 659 (1957); *see also Matter of Marquez*, 20 I. & N. Dec. at n.3 (discussing the
11 congressional history and intended restrictions placed on adopted foreign children seeking visa
12 petitions); *Matter of Cuello*, 20 I. & N. Dec. 94 (BIA 1989) (addressed the standard for
13 "piercing the veil" of the interfamily and the use of *ad hoc* adoptions to circumvent the
14 immigration laws.); *Matter of Repuyan*, 19 I. & N. Dec. 119, 121-22 (BIA 1984) (refers to
15 congressional concern over *ad hoc* adoptions to circumvent immigration laws).

16 Similarly, Commonwealth legislators indirectly addressed *ad hoc* adoptions and sham
17 adoptions when they enacted 8 CMC § 1420(c), which prohibits the use of adoptions to
18 circumvent Commonwealth immigration laws. Interpreting the express language of the code,
19 legislators enacted this statute with the intent to stop the kind of adoption presented in this case
20 and the case of so many others. From the testimony of the Petitioner and the natural mother,
21 there is no indication that the natural parents will be separated from the children subsequent to
22 the adoption. Neither testimony convinced the Court that a strong bond had formed between
23 the Petitioners and the children over the course of the last year, especially in light of the fact
24 that the natural parents resided throughout the last year with their children in Saipan. In
25 addition, the Petitioner testified that before the children arrived in December of 2004, he had
26 never met the children. Thus, under the current circumstances, the Court is not convinced a
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1 real bond has been formed between the Petitioners and the adopted children, or that the natural
2 parents are actually terminating their parental rights. Rather, it appears as though the adoption
3 is intended solely to change the immigration status of the children, and perhaps provide them
4 with more opportunity in the Commonwealth or the United States. This is an impermissible
5 use of adoption laws in the Commonwealth and the United States.
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7 **B. It is Against Public Policy to Permit Sham Adoptions**

8 It is important to preserve adoptions for the purposes for which they are intended.
9 Adoption is intended to provide legal parental rights to those who care for a child in need of a
10 parental figure. To grant an adoption in order to obtain a change in immigration status is an
11 abuse of the process, and it is a violation of the laws of the Commonwealth and United States.

12 In addition to preserving adoption laws for intended purposes, it is important to take into
13 consideration the profound effect that legal and illegal immigration can have on such a small
14 commonwealth. The CNMI is extremely small, and the financial condition of the schools and
15 healthcare systems are currently in a state of deterioration. Now more than ever, it is vital that
16 Immigration Services be afforded the opportunity to monitor immigration as the immigration
17 laws intended. 3 CMC §§ 4111, *et seq.* Saipan's infrastructure cannot afford to support the
18 influx of minors that would result if sham adoptions were a permissible method of
19 circumventing immigration laws and regulations.

20 Lastly, the Commonwealth adoption and immigration laws must be applied equally and
21 fairly. It would be highly prejudicial to grant an adoption in one case, yet deny an adoption in
22 another case, when the facts and reasons surrounding the adoption are similar, if not the same.
23 Therefore, although the Attorney General's Office has provided two letters in favor of the
24 Petitioners' adoption, these letters alone are not sufficient to support a finding in favor of the
25 Petitioners. Neither the Petitioners nor the Attorney General's Office have shown this Court
26 that an investigation was conducted to test the legitimacy of this adoption. Nor was there any
27 indication that the Attorney General's Office was familiar with the children's situation in the
28 Philippines, or had found the circumstances detrimental to the children's health, safety, and

1 education. Nothing was presented to this Court that distinguished this case from any other
2 sham adoption except the income earned by the Petitioners and two uninformative letters from
3 the Attorney General's Office. As such, the Court believes it would be unfair to grant this
4 petition when the facts are so similar to petitions this Court has denied.

5 **C. Conclusion**

6 When people enter the CNMI legally, they demonstrate respect for our laws. Non-
7 residents, who abide by the laws of this community, improve our community. Family
8 reunification can be facilitated when people abide by our laws. However, turning a blind eye
9 to sham adoptions undermines the Commonwealth laws concerning adoption and immigration.
10 It truly scoffs those who wait to enter the Commonwealth through legal channels. Equally as
11 important, turning a blind eye to sham adoptions, in any situation, encourages more people to
12 immigrate illegally and diminishes respect for the law.

13 Therefore, the Court hereby **DENIES** this *Petition for Adoption* because none of the parties
14 provided the Court with a convincing explanation as to why the natural parents' rights should
15 be terminated, and in the absence of such an explanation and in light of the circumstances,
16 granting the adoption would be a violation of the law.

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18 **IT IS SO ORDERED** this 15th day of May, 2006.
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21
22 /s/ _____
23 KENNETH L. GOVENDO
24 Associate Judge
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