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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 30.05.2025

+ W.P.(C) 3880/2025

JASLEENIQBAL SIDHU & ORS.

.....Petitioners

Through: Ms. Sheena Chhabra, Ms. Anjani Chhabra, Ms. Aakash Gupta and Ms. Shilpa Chaurasia, Advs. along with petitioners and adoptive father.

versus

UNION OF INDIA THROUGH PRINCIPAL SECRETARY & ORS.

.....Respondents

Through: Ms. Pratima N. Lakra, CGSC along with Mr. Chandan Prajapati, Mr. Shailendra Kumar Mishra, Ms. Chandni Godiyal, Mr. P. Chandni Mr. Sumit Bhargava, Advs., and Mr. G. Ravi, Asst. Director for CARA.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (Oral)

1. The present petition has been filed by the petitioners seeking that the respondent no. 2 [Central Adoption Resource Authority (CARA)] be directed to issue a 'No Objection Certificate' (NOC) for taking the petitioner no. 2 to Australia pursuant to the adoption of the petitioner no. 2 by the petitioner no. 1 and her husband.
2. The petitioner nos. 3 and 4 are the biological parents of the petitioner no. 2. The petitioner no. 1 is the adoptive mother of the petitioner no. 2. The petitioner no. 5 is the grandmother of the petitioner no. 2.



3. The petitioners belong to a Sikh family; the adoptive father [husband of the petitioner no. 1] is the elder brother of the biological father [petitioner no. 4]. The petitioner no. 1 and her husband (adoptive parents) are citizens of Australia. The petitioner no. 1 and her husband got married in the year 2014. They do not have a biological child. On the other hand, the petitioner nos. 3 and 4, who previously had a biological son, had given birth to the petitioner no. 2 on 22.01.2020.

4. It is stated that the petitioner no. 1 came to India on 20.01.2020 and was present in the hospital at the time of the birth of the petitioner no. 2, and was involved in taking care of the newly born child, *i.e.* the petitioner no. 2.

5. It was agreed within the family that the petitioner nos. 3 and 4 would give the petitioner no. 2 in adoption to the petitioner no. 1 and her husband, with free consent and without any fear and favour. The petitioner no. 5, the mother of the biological parents and the adoptive parents, as also other family members, agreed without making any objection regarding the adoption.

6. It is submitted that on 17.02.2020, the adoptive father came to India to perform the necessary rituals for the adoption of the petitioner no. 2.

7. On 27.02.2020, an adoption ceremony was organized as per Sikh rituals and customs in Gurudwara Sahid Mai Veero Bhai Bhagtu Ji situated in village Chak Ram Singh Wala, wherein the petitioner nos. 3 and 4 put the petitioner no. 2 in the lap of the petitioner no. 1 and her husband.

8. The adoption certificate was issued by the aforementioned Gurudwara on the same date, and it reads as under :-



ਗੁਰੂਦੁਆਰਾ ਸਾਹਿਬ ਮਾਈ ਵੀਰੋ ਭਾਈ ਭਗਤੂ ਜੀ

ਪਿੰਡ ਚੱਕ ਰਾਮ ਸਿੰਘ ਵਾਲਾ ਜ਼ਿਲ੍ਹਾ ਬਠਿੰਡਾ

ਪੱਤਰ ਨੰ: 2722020/0001

ਮਿਤੀ 27.2.2020

ADOPTION CERTIFICATE

TO WHOME SOEVER IT MAY CONCERN

It is to certify that today on 27.02.2020, adoption of Alambir Singh Sidhu (DOB-22.01.2020) has been solemnized in this Gurudwara Sahib, before Shri Guru Granth Sahib Ji as per Sikh customs by the natural parents - Jaspal Singh Sidhu S/o Harbhajan Singh S/o Kikkar Singh and Sharanjeet Kaur W/o Jaspal Singh Sidhu S/o Harbhajan Singh, R/o Village Chak Ram Singh Wala, District Bathinda and adopted Parents - Iqbaljeet Singh Khalsa Sidhu S/o Harbhajan Singh S/o Kikkar Singh and Jasleen Iqbal Sidhu W/o Iqbaljeet Singh Khalsa Sidhu S/o Harbhajan Singh, R/o 10, Vargon Circuit, Holmview, Queensland, Australia, 4207. Jaspal Singh Sidhu is the real younger brother of Iqbaljeet Singh Khalsa Sidhu and they are in blood relation. Sharanjeet Kaur Sidhu and Jaspal Singh Sidhu has two sons and Jasleen Iqbal Sidhu and Iqbaljeet Singh Sidhu has no child. Jasleen Iqbal Sidhu and Iqbaljeet Singh Sidhu want to adopt Alambir Singh Sidhu and Sharanjeet Kaur Sidhu and Jaspal Singh Sidhu also agree for this. All the religious ceremonies of this adoption were completed in this Gurudwara Sahib by both the parties in the presence of their relatives, neighbors and respectable community members wherein Jaspal Singh Sidhu and Sharanjeet Kaur Sidhu gave their younger son Alambir Singh Sidhu permanently in adoption and placed him in the lap of Iqbaljeet Singh Khalsa Sidhu and Jasleen Iqbal Sidhu. Jaspal Singh Sidhu and Sharanjeet Kaur agree that they will not have any right to take the child back and Iqbaljeet Singh Khalsa Sidhu and Jasleen Iqbal Sidhu undertake to maintain and look after the study and future life of Alambir Singh Sidhu.

ਜਸਪਾਲ ਸਿੰਘ (ADHAR CARD No 343311213181)
ਸ਼ਰਾਨਜੀਤ ਕੌਰ (ADHAR CARD No 424266236719)
Natural Parents

Iqbaljeet Singh (PB3283467) AUSTRALIAN PASSPORT
Jasleen Iqbal Sidhu (PA2298201) AUSTRALIAN PASSPORT
Adoptive Parents

For 100 Years Bhair Bhagtu Ji
Chak Ram Singh Wala (S.T.)

GRANTHI SINGH
ਮਨਿੰਦਰਪਾਲ ਸਿੰਘ

MANAGER
ਬੁਧਦੇਵ ਸਿੰਘ

VICE-PRESIDENT
ਰਵਿਰਾਜ

PRESIDENT
ਵਿਜੈ ਸਿੰਘ



9. The petitioners have also filed photographs of the adoption ceremony; the same are appended as Annexure P-6 to the present writ petition.

10. On 15.03.2020, the adoptive parents returned to Australia. During this period, the adoptive parents left the petitioner no. 2 in the care of the petitioner no. 5.

11. On 15.09.2020, an Adoption Deed (appended as Annexure P-8 to the present petition) was registered between the petitioner nos. 3 and 4 (First Party, *i.e.* biological/natural parents) and the petitioner no. 1 and her husband (Second Party, *i.e.* adoptive parents). For the purpose of execution of the Adoption Deed, the adoptive parents issued a Power of Attorney dated 24.08.2020 in favour of the petitioner no. 5. The Adoption Deed was duly registered before the Joint Sub-Registrar, Nathana, Bathinda.

12. It is the case of the petitioners that the Adoption Deed was registered for the purpose of obtaining necessary documents to enable the petitioner no. 2's travel to Australia after removal of travel restrictions that had been imposed on account of the COVID-19 situation.

13. Subsequently, the birth certificate of the petitioner no. 2 was also issued reflecting the petitioner no. 1 and her husband as the parents.

14. It is highlighted that the adoption of petitioner no. 2 has been accepted by various authorities, such as Health and Welfare Department (State of Punjab), Ministry of External Affairs (Union of India), UIDAI (Ministry of Electronics and Information Technology, Union of India), based on which the petitioner no 2 has accordingly been issued respective identification documents (Birth Certificate, Passport, Aadhar Card) in the name of his adoptive parents.



15. In December 2020, the petitioner no. 1 and her husband approached the respondent no. 2 to issue the requisite NOC which is mandatorily required to obtain visa of the petitioner no. 2 for the purpose of taking him to Australia. It is emphasised that since then, the matter has been languishing and the requisite NOC has not been issued by the respondent no. 2 (CARA).

16. In January 2021, the petitioner no. 1, a kindergarten pre-school teacher in Australia, got travel exemption (amidst COVID-19 travel restrictions) to travel to India. Consequently, she came to India to stay along with the petitioner no. 2. It is stated that since then the petitioner no. 1 has been staying with the petitioner no. 2 and looking after him.

17. In the counter-affidavit filed on behalf of the respondent no. 2 (CARA), it has been candidly stated that prior to 17.09.2021, CARA had no statutory jurisdiction or role in matters pertaining to adoption effected under the Hindu Adoption and Maintenance Act, 1956 (hereinafter referred to as the “HAMA”).

18. It is further stated that an amendment to the Adoption Regulations was brought in force with effect from 17.09.2021, whereby Chapter IV-A was inserted, delineating the procedure to be followed in cases where children adopted under HAMA are sought to be relocated abroad by the adoptive parents.

19. Subsequently, by a further amendment to the Adoption Regulations, which came into effect on 23.09.2022, Chapter VIII was incorporated, comprehensively laying down the procedural framework applicable to the children adopted under HAMA by parents desiring to relocate the adoptive



child outside the territory of India.

20. According to the respondent no. 2 (CARA), the Adoption Regulations, 2022 require the necessary documentation / certification to be received from the concerned Authority of the receiving Country and as contemplated under the Hague Convention, 1993 (Convention on Protection of Children and Co-operation in respect of Inter-country Adoption). The absence of the aforesaid necessary documentation / certification has been raised as one of the impediments to the grant of NOC by the respondent no. 2 (CARA).

21. The second impediment cited in the counter-affidavit of the respondent no. 2, in the grant of NOC, is that the General Power of Attorney dated 24.08.2020 (on the basis of which the Adoption Deed was registered) is not a legally valid instrument under the Queensland Powers of Attorney Act, 1998, for the purpose of adoption. Thus, it is contended that such a General Power of Attorney could not be utilized for the adoption of child under HAMA.

22. Both the objections raised on behalf of the respondent no. 2 are untenable.

23. In the present case, as already mentioned above, the concerned Adoption Deed was executed in 2020. The same along with the necessary photographs showing handing over / taking over of the child has been duly filed along with the present petition.

24. As such, the adoption stood concluded and the same was in accordance with the extant provisions of law.

25. Article 37 of the Hague Convention, 1993 itself provides as follows :-



“Article 37

In relation to a State which with regard to adoption has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.”

The implication of the above is that concluded adoptions under HAMA, are required to comply with the extant requirements set out in HAMA itself, and cannot be retrospectively subject to any other extraneous requirements / pre-conditions. In **R.K & Anr. Vs. Central Adoption Resource Authority**, 2021: DHC: 2671, it has been, *inter alia*, noted that:

“81..... The Hague Convention recognizes HAMA adoptions under Article 37 but also stipulates acquiring of an NOC from the Central Authority in case of inter-country adoptions.....”

26. It can also be seen that the concerned Australian Authorities (Department of Home Affairs, Australian Government) has issued a communication dated 19.03.2024 addressed to the petitioner no. 2 (appended as Annexure P-18 to the present petition) stating as follows:-

“.....

Provided with your application was an adoption deed from India indicating that Jasleeniqbal SIDHU and Iqbaljeet Singh Khalsa SIDHU adopted you under the Hindu Adoptions and Maintenance Act 1956 (Ind) (HAMA) on 15 September 2020.

Any existing HAMA adoptions dated prior to 17 September 2021 can be registered with the Central Adoption Resource Authority (CARA) retrospectively. The process involves the adoptive parents engaging with the District Magistrate (DM) office for validation of their HAMA adoption deed, which, if validated, will be registered with CARA, who will then provide a letter of support validating the inter-country adoption to the adoptive parents.

Departmental procedures confirmed the below regarding your adoption deed:

- *The adoption deed is genuine.*



- *The adoption was done under HAMA.*
- *As per the Adoption Regulation 2022 dated 23 September 2022, a support letter from the Central Adoption Resource Authority (CARA) is required for all HAMA adoption deeds registered prior to September 2021.*
- *The CARA support letter is required to validate the adoption for intercountry movement/settlement of the adopted child and to complete the adoption process.*
- *Ties with your biological parents being severed and your adoptive parents having full and permanent parental rights are subject to the CARA support letter.”*

27. Thus, even the Australian Authorities, as per the applicable law, have confined to seek certification as regards compliance with HAMA, and only a support letter is required from CARA on account of the fact that the present case is a HAMA adoption duly registered prior to September, 2021.

28. Admittedly, requisite certificate/s have also already been issued by the District Magistrate (Bathinda, Punjab). There is no ground for withholding the grant of a support letter / NOC by CARA.

29. It is rightly pointed out by the petitioners that in a similar factual conspectus, the Supreme Court, in a recent case of ***Prema Gopal v. Central Adoption Resource Authority & Ors.*** in SLP (C) No. 14886/2024 (where the act of giving and taking of the children was performed on 09.01.2020) has observed in the judgment/order dated 29.01.2025¹ that there can be no hurdle in the consideration of the case of the petitioner therein, having

¹ “We are prima facie of the view that the learned counsel for the petitioner is right in his submissions. In the circumstances, we direct respondent no.3/Collector and respondent no.2 to entertain the application to be filed by the petitioner herein with all supporting documents, within a period of one week of from today.

On receipt of the said application, respondent nos. 3 and 2 shall consider the case of the petitioner herein having regard to the relevant provisions of the Regulations, 2022 and in accordance with law bearing in mind the fact that the adoption took place on 09.01.2020.”



regard to the provisions of the Adoption Regulations 2022 and considering that the adoption took place prior to the coming into force of the said regulations.

30. *Vide* order dated 24.03.2025 passed in the aforementioned case of **Prema Gopal** (supra), the Supreme Court issued specific directions to CARA to issue No Objection Certificate to the petitioner. It was observed as under:-

“In the circumstances, we direct respondent no. 1 to comply with sub-section 2 of Section 60 of the Act and issue ‘No Objection Certificate’ to the petitioner herein within a period of four weeks from today.

For immediate reference, Section 60 of the aforesaid Act is extracted as under –

“60. Procedure for inter-country relative adoption-

(1) A relative living abroad, who intends to adopt a child from his relative in India shall obtain an order from the [District Magistrate] and apply for no objection certificate from Authority, in the manner as provided in the adoption regulations framed by the Authority.

(2) The Authority shall on receipt of the order under sub-section (1) and the application from either the biological parents or from the adoptive parents, issue no objection certificate under intimation to the immigration authority of India and of the receiving country of the child.

(3) The adoptive parents shall, after receiving no objection certificate under sub-section (2), receive the child from the biological parents and shall facilitate the contact of the adopted child with his siblings and biological parents from time to time.”

On a perusal of sub-section 2 of Section 60, it is noted that when respondent no.1/Authority receives an order under sub-section 1 from the District Magistrate or the Collector as in the instant case and the application from either the biological parents or from the adoptive parents, as the case may be, shall issue no objection certificate only under intimation to the immigration authority of India and of the receiving country of the child. The said sub-section does not envisage



any 'no objection certificate' to be issued by the country where the child is to proceed. Therefore, the Authority shall now consider the certificate issued by the District Collector and process the matter under sub-Section 2 of Section 60 of the Act by issuance of 'no objection certificate' with intimation to the immigration authority of India and of the receiving country of the child, i.e, United Kingdom."

31. As such, the respondent no. 2 is bound to follow the same procedure in the present case as well; after considering the certificate issued by the District Magistrate, the matter is required to be processed for issuance of a No Objection Certificate / support letter, as sought by communication dated 19.03.2024 issued by the Department of Home Affairs, Australian Government.

32. The second objection on behalf of CARA, regarding the invalidity of the Power of Attorney on the basis of which the Adoption Deed was registered, is also insubstantial.

33. A perusal of the Power of Attorney issued in the present case reveals that it has been issued in favour of the petitioner no. 5, and *inter alia* authorizes as under:-

"4. The attorney/s power is subject to the following terms:

to act on my behalf in my adoption of ALAMBIR SINGH SIDHU (DOB: 22/01/2020), baby boy of my younger brother JASPAL SINGH SIDHU and his wife SHARANJEET KAUR SIDHU, who is currently residing in India including but is not limited to the following:

- 1. entering into, signing and executing adoption deed or any necessary documents for the purpose of adopting the aforementioned baby and having the adoption deed or documents registered or presented to relevant authorities for registration;*
- 2. attending interview, lodging applications, liaising with the relevant parties or officers from the Department of Home Affairs;*
- 3. after visa is granted, travel with the baby and bring the baby to*



Australia;

and to do all such acts and things as my said attorney shall deem fit for the purpose of registration of the above mentioned adoption deed, lodging and obtaining visa, and bring my adopted child to Australia.”

34. Learned counsel for the petitioners relies upon the judgment of the Punjab and Haryana High Court in ***Narinderjit Kaur v. Union of India and Another*** [AIR 1997 P&H 280], in which, it has been clearly held that a child can be adopted “under the authority” of the parents. It has been observed in that case as under:-

“5. Validity of adoption has to be examined in the light of the Hindu Adoptions and Maintenance Act, 1956 (hereinafter referred to as ‘the Act’). Section 6 of the Act provides that no adoption shall be valid unless the person adopting has the capacity and also the right, to take in adoption, the person giving in adoption has the capacity to do so; the person adopted is capable of being taken in adoption and the adoption is made in compliance with the other conditions mentioned in Section 11.

6. Capacity of the natural parents to give and the capacity of the adoptive mother to take the petitioner in adoption is not in dispute. It is also not disputed that the petitioner was capable of being taken in adoption. Other conditions for a valid adoption are prescribed in Section 11 of the Act. Relevant provision of this section with which we are concerned is (vi), which reads as under:—

“(vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth or in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up to the family of its adoption.”

7. It clearly envisages that the child can be adopted “under the authority” of the parents. In this case, the adoptive mother had executed a valid power of Attorney authorising Surjit Singh Jaswal to take the petitioner in adoption on her behalf. Actual adoption took place according to the Sikh rites in the presence of Sri Guru Granth Sahib. Child was given in adoption willingly by the natural parents and was taken in adoption by the adoptive mother through her Attorney with the intention of transferring the child from the family of its birth. Adoption



made was valid adoption and the finding recorded to the contrary in order Annexure P-1, cannot be sustained. Respondents have themselves admitted that on a subsequent advice given by the Law Ministry, it has been clarified that adoption could be made “under the authority” given by the adoptive parents. The ground taken by the respondents now that the passport cannot be issued to the petitioner because of the remarriage of the adoptive mother on 16.11.1994 is also not sustainable. Adoption took place on 2.3.1990 and for all intents and purposes, adoption would be deemed to have been completed on that date. On that date, adoptive mother had the capacity to take the child in adoption. Adoption cannot be invalidated because of the subsequent marriage of the adoptive mother. Petitioner became the daughter of the adoptive mother on the date she was taken in adoption and is, thus, entitled to a new passport with the name of her adoptive mother inserted in it.”

[emphasis supplied]

35. The above observations clearly apply to the facts of the present case.
36. It is also fallacious to contend that the concerned General Power of Attorney is not valid as per the Queensland Power of Attorney Act. No such objection has been raised by the Australian Authorities; and therefore, it is untenable for the respondent no. 2 to take this stand.
37. It is noted that the concerned Adoption Deed has already been registered on the basis of the Power of Attorney in question. The religious rituals and ceremony for the purpose adoption was executed as far back as 27.02.2020 (much prior to registration of the Adoption Deed) in the presence of the adopted parents and biological parents, and the handing over and taking over of the child also happened on that day itself.
38. There is no controversy that the Adoption Deed that was executed thereafter was based upon authorization given by the adoptive parents in favour of their mother, who is also the mother of the biological parents.
39. Had there been any legal lacuna in the Power of Attorney in terms of



the applicable provisions of the Australian Law, the objection to this effect would have been raised by the Australian Authorities themselves.

40. In the aforesaid circumstances, there appears no impediment to CARA issuing the requisite NOC for the purpose of taking the petitioner no. 2 to Australia.

41. Thus, in line with the orders passed by the Supreme Court in ***Prema Gopal*** (supra), the respondent no. 2 (CARA) is directed to issue the requisite NOC to the petitioners within a period of four weeks from today.

42. The petition is disposed of in the above terms.

SACHIN DATTA, J

MAY 30, 2025/r, kg