

LAW LIBRARY OF CONGRESS

HONDURAS

ADOPTION LAW

Executive Summary

Adoptions of minors in Honduras require a court authorization and a notarial deed of adoption, which must comply with all the statutory requirements. Adoptions must also be registered with the Office of the Civil Registry of Persons. Without this registration, an adoption does not have legal effects between the adopted child and the adoptee or with regard to third parties.

I. Facts and Issue Presented

A. Facts

This report concerns the adoption of a Honduran child, born in 1988, by the child's U.S. citizen stepparent through a notary public in Honduras in 2002. We were provided with a copy of the court decision authorizing the adoption and a copy of the adoption certificate issued by the public notary in the vernacular, as well as an English translation of the certificate.

B. Issue

Under the above facts, the Executive Office for Immigration Review inquires whether Honduran notaries can create a legal adoptive relationship and whether based on the documents submitted the notary adoption in the case at hand is valid.

II. Statement of Law

A. Family Code

Adoption in Honduras is governed by the provisions of the Family Code,¹ as amended by the Code of Children and Adolescents.² There is no special adoption provision for stepparents, as is apparently the case in many U.S. states. The major steps that an adopter must take and the authorities and institutions that must be involved in an adoption procedure are the following:

¹ Decreto No. 76-84, Código de Familia, *as amended* (Editorial Oim, Tegucigalpa, 2004), originally published officially in La Gaceta [L.G.], Aug. 16, 1984. The Código de Familia was significantly amended by the Código de la Niñez y la Adolescencia [Code of Children and Adolescents], published in L.G., Sept. 5, 1996.

² Decreto No. 73-96, Código de la Niñez y la Adolescencia, *as amended* (Editorial Oim, Tegucigalpa, 2004), originally published officially in L.G., Sept. 5, 1996.

- 1) The adopter must file a petition to adopt a child before the Honduran Institute of Children and the Family (*Instituto Hondureño de la Niñez y la Familia, IHNFA*). Once the application has been reviewed and found to meet all requirements, a child is assigned to the adopter. The Institute may give the child in-family placement for the duration of the adoption procedure.³
- 2) If the adoptee is a minor, the adopter must request authorization to adopt the child before a family court.⁴ The petition must be accompanied by many additional required documents, listed in the Code.⁵ The government attorney (*Fiscal*) will be required to take a position on the adoption within three days and will participate in the adoption proceedings. The same requirement is imposed upon the minor's parents or legal representative. In addition, the adopter must publish a summary of the adoption request in the *Diario Oficial La Gaceta*, the official gazette, so that anyone with an adverse interest in the adoption may oppose it.⁶
- 3) If no one is opposed to the adoption, the court finds that all the requirements have been met, and the court determines that the adoption would be in the best interest of the child after receiving the confidential socioeconomic report from the IHNFA, which is mandated by the Code when the child is under fourteen years of age, the court will declare the adoption admissible (*haber lugar a la adopción*).⁷
- 4) Having obtained the adoption authorization by the court, a public deed of adoption is executed before a notary public.⁸ The notary public drafts the legal instrument of adoption, in which the notary must attest to the legal capacity of the parties executing the deed, that the legal requirements have been fulfilled, and that the adoption was approved by the appropriate court, transcribing the full text of the adoption decision in the notarial deed.⁹ Many other formalities that are required in an adoption deed are addressed in the section on notary law, below.
- 5) A summary of the deed of adoption must be published in the *Diario Oficial La Gaceta*. Anyone with an interest adverse to the adoption may file objections with the Civil Registrar within fifteen days from the date of publication, in writing, setting out the reasons for his dissatisfaction and indicating the evidence supporting his opposition.¹⁰

³ Código de Familia art. 123.

⁴ *Id.* arts. 125, 173.

⁵ *Id.* arts. 125, 173, 174, 175, 175A.

⁶ *Id.* arts. 176, 134.

⁷ *Id.* arts. 125, 144, 177.

⁸ *Id.* arts. 125, 179.

⁹ *Id.* art. 127.

¹⁰ *Id.*

- 6) The deed of adoption is registered before the Office of the Civil Registry of Persons. The Municipal Civil Registry where the child's birth was registered prior to registration of the adoption must verify compliance with the requirements mandated in preceding paragraphs (4) and (5). A marginal notation in the original birth registration must be made indicating that it is void. Then, a new birth registration of the minor must be made, in which the names of the biological parents are replaced with the names of the adoptive parents.¹¹

B. Notary Law

Notarial deeds (*escrituras públicas o instrumentos públicos*) issued by notaries public must contain statutorily required formalities to be valid. The applicable governing statute when the adoption deed at hand was issued in 2002 was the Notary Law (*Ley del Notariado*) of 1930, as amended.¹² There are many provisions in that Law regulating the formalities for notarial deeds.¹³ This report will refer only to those provisions relevant to the notarial deed of adoption in the present case.

The statute states that notaries may not authorize any deed without the presence of two witnesses of any sex.¹⁴ Notarial deeds must contain not only the first names, last names, domicile, and profession of the parties executing the deed, but also those of the witnesses. The deed must also express whether the parties and witnesses are under- or overage.¹⁵ Under article 32, notaries must attest—within the notarial deed—to know the parties, or to have secured acquaintance through the attesting witnesses, or through two other persons known to them who are thereby called witnesses of acquaintanceship.¹⁶ Notaries must attest to having read to the parties and attesting witnesses the entire deed, or having allowed them to read it at their discretion, before signing the deed. Similarly, notaries must attest to having read to the witnesses of acquaintanceship the part of the deed that refers to them, and of having advised them that they have the right to read it by themselves.¹⁷ Lastly, notaries must issue public deeds and other acts in which they are involved by reason of their office with their full signature and

¹¹ *Id.* arts. 128, 179, 180.

¹² *Ley del Notariado*, Tegucigalpa, 1991, originally published officially in *La Gaceta*, Apr. 8, 1930. Note: The Law Library of Congress does not have a 2002 edition of this statute, but amendments published in *La Gaceta* on February 2, 2002, have been found in the Global Legal Information Network database and considered, but they did not affect the provisions cited in this report. This statute was superseded by the Notary Code, published officially in *La Gaceta* on January 17, 2006.

¹³ The notary public in the civil law system is a public officer of considerable importance. The notary has three major functions: (1) to draft and ensure the legality of documents such as wills, contracts, mortgages, conveyances, adoptions, etc.; (2) to provide documents with a conclusive presumption of authority in court proceedings; and (3) to serve as a depository of original texts of the documents that he or she authorizes. Only attorneys are eligible to become notaries public. Due to the great importance of their functions, the law requires that documents issued by notaries must comply with many requirements.

¹⁴ *Ley del Notariado* art. 29.

¹⁵ *Id.* art. 27.

¹⁶ *Id.* art. 32.

¹⁷ *Id.* art. 33.

seal.¹⁸ Under article 52, a notarial deed that does not contain the requirements referred to in article 32, cited above, is void; this is without prejudice to other reasons for which a notarial deed may be void under other statutes.¹⁹

Copies of a deed must include a citation to the notary's protocol²⁰ and bear the deed number of the original deed in the notary's protocol.²¹

C. Civil Registry Law

Because adoptions alter the civil status of an adoptee, the applicable law on this subject must be reviewed. The civil status of persons in May 2002 was governed by the Law on the National Registry of Persons.²²

Under this Statute, acts related to the civil status of persons such as births, marriages, adoptions, and so on, had to be registered in the Office of the National Registry of Persons.²³ The Statute specifically stated that: (a) all adoptions must be registered with the Civil Registry Office based on the insertion of the court decision authorizing the adoption into the notary's protocol;²⁴ and (b) an adoption has no legal effect between the adopter and the adoptee, or as to third parties, until it has been registered.²⁵

Other relevant provisions state that Civil Registry certificates of registration are proof of the civil status of the respective person, both in and out of court.²⁶

III. Analysis/Application

Based on a review of the authenticated photocopies of the documents submitted in the present case, and the application of the above-cited law to the facts of the case, the following observations may be made.

¹⁸ *Id.* art. 28.

¹⁹ *Id.* art. 52.

²⁰ A notary's protocol is the ordered collection of original deeds authorized by a notary during a year. The protocol consists of one or more bound volumes, paginated and with the other requirements determined by the statute. *Id.* art. 13.

²¹ *Id.* art. 58.

²² Decreto No. 150-82, Ley del Registro Nacional de las Personas (Tegucigalpa, 1998), *as amended*. Although the Library of Congress has only the 1998 edition of this Law, research in the Global Legal Information Network database did not reveal any amendments between 1998 and 2002, or until the Law was superseded in 2004 by the new Law on the National Registry of Persons, published officially in La Gaceta, May 15, 2004.

²³ Decreto No. 150-82, Ley del Registro Nacional de las Personas art. 24 (Tegucigalpa, 1998), *as amended*.

²⁴ *Id.* art. 85.

²⁵ *Id.* art. 86.

²⁶ *Id.* art. 37.

- 1) A court decision authorizing the adoption was obtained on July 26, 2002. The Court's decision does not spell out the age of the adoptee. A statement of the Court, which reads as follows: "Whereas: minors under 18 years of age may be adopted" ("*Considerando: Que se podrán ser [sic] adoptados los menores de 18 años*"), implies that the adoptee is under eighteen years of age. The Court decision does not indicate that Court received the confidential socioeconomic report from the Honduran Institute of Children and the Family (IHNFA), which is required by the Family Code when the child is under fourteen years of age. Therefore, one may only speculate that the adoptee was between fourteen and eighteen years of age.
- 2) The minor's biological father is not mentioned, therefore we may again speculate that the Court dealt with the issue of the father before it issued its decision. As stated above, anyone who has an adverse interest to the adoption may oppose it before the Court, explaining his/her reasons prior to the issuance of the Court's decision. In addition, the Family Code states that if a child is a minor the consent for adoption must be given by the person or persons who exercise parental authority, with the authorization of the Court.²⁷
- 3) The notarial deed of adoption lacks many of the required formalities mandated by the Notary Law and the Family Code as follows: Departing from the Notary Law requirements, only one witness was present, instead of two, as required, and the witness's name, domicile, and profession was not mentioned in the text of the notarial deed, as mandated. The notary did not attest within the notarial deeds to know the parties or to have secured acquaintance through the attesting witnesses. The notary did not attest to having read the entire deed to the parties and the only attesting witness, or having allowed the parties that were present to read it at their discretion before signing the deed. Departing from the mandates of the Family Code, the notary did not attest to the following: the legal capacity of the parties executing the deed; that the legal requirements had been fulfilled; and that the adoption was approved by the appropriate court. In addition, the notary did not transcribe the full text of the adoption sentence in the notarial deed. Again departing from the Notary Law requirements, the copy of the adoption deed did not have a citation to the notary's protocol and did not reflect the deed number of the original deed in the notary's protocol. Lastly, there is no indication that the notarial deed of adoption was registered in the Office of the National Registry of Persons, a chief requirement in order for the adoption to have legal effect between the adopter and the adoptee, or as to third parties. As explained above, registration of the adoption in the Office of the National Registry of Persons is required by both the Family Code and the Law on the National Registry of Persons. Its registration could have been proved by showing a new birth registration of the child where the name of the adopter would appear as the father of the child.

²⁷ Código de Familia art. 123(3).

IV. Conclusion

In light of the fact that the notarial deed lacks many of the formal statutory requirements and given the lack of proof that the adoption was registered in the Office of the National Registry of Persons, it cannot be determined whether the adoption at hand is complete and valid.

Prepared by Norma C. Gutiérrez
Senior Foreign Law Specialist
November 2010