



Peru: Adoption

December 1991

LL File No. 1992-0341
LRA-D-PUB-000908

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PERU

Adoption

The case involves a minor child of a Peruvian married couple adopted by two American citizens. According to the adoption decree, the natural father abandoned the child. Therefore, the natural mother gave her consent for the adoption of her child. The questions may be restated as follows: is the adoption decree valid under Peruvian law without the natural father's consent under the circumstances of abandonment referred to?

Adoption in Peru is governed by the Civil Code¹ and the Code of Civil Procedure.² The consent of the child's parents with parental authority (*patria potestad*) over the child is one of the legal requisites for an adoption to be granted.³ Parental authority (*patria potestad*) is jointly exercised by both parents.⁴ The Law also provides that any parent may be deprived of such authority if he or she abandons the child for six consecutive months or when the compiled duration of such abandonment exceeds six months. Abandonment also occurs when the parent refuses to provide support to his or her child.⁵

Once the adoption decree is issued, the judge will enter the adoption decree into the Civil Registry records where the original birth certificate was issued so it may be replaced by the new one. However, the original birth certificate shall be kept for legal impediments for marriage purposes only.⁶

Any public instrument such as a judicial adoption decree and its record in the Civil Registry are presumed valid unless successfully challenged before a court of law.⁷

Therefore, in this case, since the copy of the authenticated adoption decree submitted for examination has not been appealed and has been judicially declared as final, it is valid. Furthermore, the decree has been duly recorded in the Civil Registry and there are no records of any judicial decision voiding such entry. Consequently, this adoption must be considered final and valid. If any interested party wanted to challenge the decision on grounds of non-compliance with one or any legal requirement for the adoption, such party should have done so before a court of law. In this way, the adoption decree could have been judicially invalidated. If such steps were not taken, the adoption has full legal effect since the date it was judicially granted, as recorded.

¹ *Codigo Civil 1936-1984 concordancias*, Fernando Romero Diez-Canseco (Libreria Studium Ediciones, Lima, 1987), arts. 377-385.

² II *Codigo de Procedimientos Civiles*, Fernando Guzman Ferrer (Editorial Cientifica, Peru, 1986), arts. 1313-1320.

³ *Supra* note 1, *Codigo Civil*, art. 378.

⁴ *Id.* art. 419.

⁵ *Id.* arts. 462 and 463, para. 3.

⁶ *Id.* art. 379.

⁷ *Supra* note 2, *Codigo de Procedimientos Civiles*, art. 405; and *Supra* note 1, *Codigo Civil*, art. 2013.

Please also note that the jurisdictional questions (a) (b) and (c) concerning the natural father's criminal proceedings on bigamy has no bearing on the adoption. It may, however, as it apparently did, constitute evidence of the fact of the father's abandonment for more than six months, a sufficient ground according to Peruvian Civil Code to exempt the civil court from requiring the natural father's consent because of his loss of parental authority or *patria potestad* over the child. (d) The Civil Court in question did not exercise either jurisdiction or competence in the criminal case on bigamy.

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December 1991