

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

THIRTEENTH CONGRESS
First Regular Session

House Bill No. 936



Introduced by **REP. JUDY J. SYJUCO**

EXPLANATORY NOTE

This bill has been occasioned by the vexing challenges posed by the peculiar and distressing plight of a Filipino child known today only as Batang X.

It is premised, therefore, on the recognition that there are children of Filipinos living in exceptionally difficult conditions around the world, and that such children need our expedient intervention and special consideration.

Batang X--the child who has opened our eyes to the need for this legislative initiative--is a child, of pre-school age, who now lives in a Safe House somewhere in the Middle East.

Batang X is the love child of two (2) Filipino overseas workers, the mother a Filipina who left the country as single, unwed and childless. She has since abandoned the child. Little is known about the father and it is not clear whether he has a wife and children of his own in the Philippines. He, however, visits the child but such visits are few and far between.

Conceived out of wedlock in a disciplined Islamic society and amid rigid *Shariah* laws on cohabitation, Batang X has, therefore, become a child that neither parent can openly or officially acknowledge.

He presently remains under the collective care of some 70 surrogate mother-Filipina contract workers who have sought refuge in the Safe House from employers who have mistreated them or from employers who have closed shop before exit visas could be granted to them. Filipino embassy and consular officers as well as other Filipino overseas contract workers (OCWs)--quiet heroes that they are--contribute to the child's sustenance, using their personal resources.

Thus, Batang X is today a nameless, fatherless, motherless and stateless child who does not exist insofar as official records in his host country in Middle East or in the Philippines are concerned. But he undeniably is Filipino with a Filipino heart that pumps Filipino blood into his Filipino veins.

In a few years, should his present condition persist, Batang X will face many uniquely distressing problems. For one, he cannot even go to school because there is simply no record of his existence!

But Congress, and the Filipino nation as a whole, has a duty to this child, to other similarly situated children, to itself and to humanity.

After all, Batang X is the epitome of our failure to provide the Filipino with a decent stake in life --this failure, the reason which compels many to seek after the proverbial greener pastures abroad, away from hearth and home, risking Filipino life and limb. Indeed, Batang X is the unfortunate casualty of economic war--the Filipino foreign exchange currency.

This bill also takes cognizance of the basic articles of the UN Convention on the Rights of the Child, which provide that:

- 1) the child has the right to a name and the right to acquire a nationality (Article 7.1);
- 2) the State has an obligation to protect, and if necessary, establish basic aspects of the child's identity, including name, nationality and family ties (Article 7.2); and
- 3) the State shall provide special protection for a child deprived of the family environment and to ensure that appropriate alternative family care or institutional placement is available in such cases. Efforts to meet this obligation shall pay due regard to the child's cultural background (Articles 20.1 and 20.2).

In recognition, therefore, of the right of Batang X to humane, decent and free existence, this bill seeks to establish rules and procedures governing the immediate grant of Philippine citizenship to children like Batang X, their repatriation and their eventual placement under the care of foster parents or their adoption, whichever is deemed in the best interest of the child.

Foster family care is introduced here as a new, legal concept to provide an alternative to domestic adoption. This, in recognition of the fact that many Filipino couples or individuals, who might otherwise have applied and qualified as adopters, are largely constrained from doing so because of the effect adoption has on the right to inheritance or intestate succession of a prospective adopter's legitimate children.

Essentially, therefore, foster family care provides abandoned Filipino children vital access to a loving, healthy and supportive family environment without necessarily impinging on the pre-eminent right of legitimate children to succeed to the benefits derived from the fruit of their biological parents' labors.

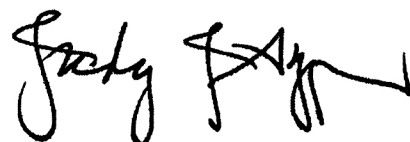
Such a foster family relationship is also envisioned as the mechanism that will finally bridge the gap between the growing number of abandoned Filipino children and the number of couples or individuals willing to provide the necessary family environment for such children.

For most Filipino children the right to a family environment; in an atmosphere of happiness, love and solidarity; and in the spirit of peace, dignity, tolerance, freedom and equality, is a right that is automatically proffered and, thus, often taken for granted.

For children like Batang X, however, whose extremely distressing situation we have heretofore been largely unaware of, this right is—for now—part of an unfortunately impossible dream.

But children, the likes of Batang X, are no less deserving of the right to be free. They, too, are God's gift to mankind, their welfare our sacred obligation to them, to ourselves, to God, and to all humanity.

Approval of this bill, therefore, is earnest and urgently sought.



JUDY J. SYJUCO

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

THIRTEENTH CONGRESS
First Regular Session

House Bill No. 936

Introduced by **REP. JUDY J. SYJUCO**

AN ACT
ESTABLISHING THE RULES AND PROCEDURES TO GOVERN THE
EXPEDITIOUS GRANT OF PHILIPPINE CITIZENSHIP, REPATRIATION AND
SUBSEQUENT PLACEMENT UNDER FOSTER FAMILY CARE OR ADOPTION OF
FILIPINO CHILDREN UNACKNOWLEDGED AND/OR ABANDONED BY THEIR
PARENTS OVERSEAS, AND FOR OTHER PURPOSES

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

ARTICLE I
GENERAL PROVISIONS

SECTION 1. *Short Title.* - This Act shall be known as the “**Save the Abandoned Filipino Child Overseas (SAFCO) Act of 2004**”.

SECTION 2. *Declaration of Policies* –

- (a) It is hereby declared the policy of the State to assure the child's right to a name, to acquire a nationality and to grow up in a family environment with an atmosphere of happiness, love and understanding for the full and harmonious development of his or her personality. Toward this end, the State has an obligation to protect, and if necessary, re-establish basic aspects of the child's identity, including his or her name, nationality and family ties.
- (b) It is likewise the policy of the State to ensure the implementation of these rights, in particular where the child would otherwise be stateless.
- (c) Where a child is illegally deprived of some or all the elements of his or her identity, it shall be the policy of the State to provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.
- (d) In all matters relating to the care, custody, placement or adoption of a child, his or her interest shall be the paramount consideration in accordance with the tenets set forth in the United Nations (UN) Convention on the Rights of the Child and other related UN Declarations or international agreements and instruments. Toward this end, the State shall provide alternative protection and assistance through foster family care and adoption for every child who is neglected, orphaned or abandoned.

SECTION 3. *Definition of Terms.* - For purposes of this Act, the following terms shall be defined as:

"Filipino child overseas" is a person below eighteen (18) years of age, at least one (1) biological parent of whom is a Filipino overseas, who is born and presently resides outside the Philippines.

- (a) *"Abandoned child"* refers to one whose parent(s) has deserted him or her for a cumulative period of at least six (6) months and is presently under the care or guardianship of any child welfare or care-giving institution overseas.
- (b) *"Stateless"* refers to a particular condition under which a Filipino child's birth overseas is unregistered, rendering him or her effectively without an identity and without a nationality.
- (c) *"Legally-free child"* is a child who has been voluntarily or involuntarily committed to institutional care overseas.
- (d) *"Host country"* refers to the country in which the abandoned, stateless or legally-free Filipino child is situated.
- (e) *"Matching"* is the judicious pairing of the legally-free child and applicant-foster parent or adopter to promote a mutually satisfying parent-child relationship.
- (f) *"Foster parent"* refers to a State-approved steward or person legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, and who shall be primarily responsible for the upbringing and development of the child.

A foster child and an adopted child are the same in the sense that both are entitled to love, guidance and support in keeping with the means of the family and without discrimination of any kind. However, a foster child is differentiated from an adopted child in that he or she shall not be entitled to all the rights provided by law to legitimate sons or daughters, particularly where legal and intestate succession are concerned. Rather, in the case of the foster child, the law on testamentary succession shall govern.

ARTICLE II PROCEDURES

SECTION 4. *Identification and Validation of Abandoned, Stateless and Legally-Free Filipino Children Overseas.* - Upon receipt of any report about an abandoned, stateless and legally-free Filipino child overseas through any of its departments, agencies, bureaus or offices or through any private organization or individual, the government shall direct the appropriate Philippine Embassy, consular office or diplomatic post to immediately validate the identity and biological parentage of the said child.

SECTION 5. *Grant of Philippine Citizenship.* - As soon as the identity and biological parentage of any such child is determined to be Filipino and validated as such, steps shall be taken to expedite the grant of Philippine citizenship to him or her by Congress: *Provided, however, That* should the existing laws of the country in which the child is situated proscribe such grant of Philippine citizenship, then government, through the Department of Foreign Affairs (DFA), shall immediately initiate diplomatic action with the end in view of obtaining special consideration for the child in accordance with international agreements or instruments: *Provided further,*

That in the case where no diplomatic relations exist with the host country or in the case where such host country is not a signatory of any child-related international instrument, the government shall endeavor to employ all legal and diplomatic alternatives and/or remedies available for and on behalf of the child.

SECTION 6. ***Repatriation.*** - Upon the determination and validation of the Filipino identity and ancestry of the child, and after the grant to him or her of Philippine citizenship, the DFA shall undertake to immediately repatriate the child.

In such cases, however, where the safety and well being of the child is deemed to be excessively endangered, then the pendency of the grant of Philippine citizenship to him or her shall not prejudice the child's repatriation. Repatriation proceedings for the exceptionally endangered child shall immediately be undertaken by the Philippine government, employing all diplomatic remedies available to assure such repatriation.

The Philippine government shall bear the following costs incidental to the repatriation of the child:

- (a) The cost of passport, visa, medical examination and psychological evaluation required, and other related expenses; and
- (b) The cost of bringing the child from the host country to the Philippines, including all travel expenses within the Philippines and abroad.

SECTION 7. ***Temporary Custody and Pre-Placement Services.*** - The Department of Social Welfare and Development (DSWD) shall take temporary custody of the child immediately after his or her repatriation: *Provided, however, That* it may allow any of its duly licensed and accredited child-placing or child-caring agencies to take such temporary custody. It shall also be the responsibility of the DSWD to develop a pre-placement program which shall include, among others, counseling services for the child and the prospective adoptive or foster parents.

ARTICLE III ADOPTION

SECTION 8. ***Adoption.*** - The adoption of a repatriated Filipino child shall be governed by the policies, rules and procedures set forth in Republic Act No. 8852, also known as the Domestic Adoption Act of 1998; and Republic Act No. 8043 or the Inter-Country Adoption Law.

ARTICLE IV FOSTER FAMILY RELATIONSHIP

SECTION 9. ***Eligibility.*** - Foster parenthood of the repatriated Filipino child shall be exclusive to Filipino citizens of legal age who are residing in the Philippines, in possession of full civil capacity and legal rights, of good moral character, have not been convicted of any crime involving moral turpitude, emotionally and psychologically capable of caring for the child, at least sixteen (16) years older than the child, and who is in a position to support and care for the child in keeping with the means of the family.

SECTION 10. ***Whose Consent is Necessary to the Foster Family Relationship.*** - After being properly counseled and informed of his or her right to give or withhold approval of the foster family relationship, the written consent of the following to such relationship is hereby required:

- (a) The child, if ten (10) years of age or over;
- (b) The proper government instrumentality which has legal custody of the child;
- (c) The legitimate and adopted sons or daughters, ten (10) years of age and over, of the prospective foster parent, if any;
- (d) The illegitimate sons or daughters, ten (10) years of age or over, of the prospective foster parent if living with said prospective foster parent and his or her spouse, if any; and
- (e) The spouse, if any, of the prospective foster parent.

SECTION 11. **Case Study.** - No petition by a prospective foster parent shall be set for hearing unless a licensed social worker of the DSWD, the social service office of the local government unit, or any child-placing or child-caring agency has made a case study of the child as well as the petitioner(s), and has submitted the report and recommendations on the matter to the court hearing such petition.

The case study shall establish that the child is legally available for foster care, and that the documents to support this fact are valid and authentic. Further, the case study of the petitioner shall ascertain his or her genuine intentions and that the foster family relationship is in the best interest of the child.

The DSWD shall intervene on behalf of the child if it finds, after the conduct of case studies, that the petition should be denied. The case studies and other relevant documents and records pertaining to the child and the petition shall be preserved by the Department.

SECTION 12. **Special Certificate of Civil Registry.** - At the time of the preparation of such case studies, it shall be the responsibility of the concerned social worker to ensure that the child is registered. If the date of birth and/or biological parents of the child are unknown, it shall be the responsibility of the concerned social worker to cause the preparation of a special certificate of civil registry, the form and substance of which shall be determined by the DSWD.

SECTION 13. **Supervised Trial Custody.** - No petition by a prospective foster parent shall be finally granted until the petitioner(s) has been given by the court a supervised trial custody period of at least six (6) months within which the parties are expected to adjust psychologically and emotionally to each other and establish a bonding relationship. During said period, temporary parental authority shall be vested in the petitioner(s).

The court may *motu proprio* or upon the motion of any party reduce the trial period if it finds the same to be in the best interest of the child, stating the reasons for the reduction of the period.

If the child is below seven (7) years of age and is placed with the prospective foster parent(s) through a pre-placement authority issued by the DSWD, the prospective foster parent(s) shall enjoy all the benefits to which the biological parent(s) is entitled from the date the child is placed with the prospective foster parent(s).

SECTION 14. ***Decree of Foster Parenthood.*** - If, after the publication of the order of hearing has been complied with, and no opposition has been interposed to the petition, and after consideration of the case studies, the qualifications of the prospective foster parent(s), trial custody report and the evidence submitted, the court is convinced that the petitioners are qualified to sustain a foster family relationship, and that the relationship would redound to the best interest of the child, a decree of foster parenthood shall be entered which shall be effective as of the date the original petition was filed. The decree shall state the name by which the child is to be known.

SECTION 15. ***Civil Registry Record.*** - An amended certificate of birth shall be issued by the Civil Registry, as required by the Rules of Court, attesting to the fact that the child is the foster child of the petitioner(s) by being registered with his/her surname. The original certificate of birth, if any, or the special certificate of civil registry shall be stamped "cancelled" with the annotation of the issuance of an amended birth certificate in its place and shall be sealed in the civil registry records. The new birth certificate to be issued to the foster child shall not bear any notation that it is an amended issue.

SECTION 16. ***Confidential Nature of Proceeding and Records.*** - All the provisions governing the confidential nature of adoption proceedings and records, as provided for in Section 15, Article IV of Republic Act No. 8552, shall govern the records, books, papers relating to any petition for foster parenthood.

SECTION 17. ***Legal Effects of Foster Relationship.*** - All legal ties between the biological parent(s) and the child shall be severed and the same shall then be vested on the foster parent(s).

The foster child shall be considered the legitimate son or daughter of the foster parent(s) for all intents and purposes, and as such, is entitled to love, guidance, and support in keeping with the means of the family and without discrimination of any kind: *Provided, however, That* in terms of legal and intestate succession, the foster child shall not possess the reciprocal rights of succession attendant to legitimate filiation: *Provided, further, That* the law on testamentary succession shall govern the foster child.

ARTICLE V DEATH OF THE FOSTER PARENT(S)

SECTION 18. ***Death of the Foster Parent(s).*** - Upon the death of the foster parent(s), custody and care of the minor foster child or, of a foster child over eighteen (18) years of age but incapacitated, shall automatically revert to the DSWD: *Provided, however, That* such reversion shall not impinge on the right of the foster child to enjoy any and all benefits or privileges he or she has acquired through testamentary succession. In such case, the DSWD shall act as the Trustee of such benefits and privileges until the foster child reaches the legal age of majority or until the foster child is declared legally capacitated.

ARTICLE VI RESCISSION OF FOSTER FAMILY RELATIONSHIP

SECTION 19. ***Grounds for Rescission of Foster Family Relationship.*** - Upon petition of the foster child, with the assistance of the DSWD if a minor, or if over eighteen (18) years but is incapacitated, as guardian/counsel, the foster family relationship may be rescinded on any of the following grounds committed by the foster parent(s): (a) repeated physical and verbal maltreatment by the foster

parent(s) despite having undergone counseling; (b) attempt on the life of the foster child; (c) sexual assault or violence; or (d) abandonment and failure to comply with parental obligations.

The foster family relationship, being in the best interest of the child, shall not be subject to rescission by the foster parent(s).

SECTION 20. *Effects of Rescission.* - If the petition is granted, the parental authority of the DSWD shall be restored if the foster child is still a minor or incapacitated. The reciprocal rights and obligations of the foster parent(s) and the foster child to each other shall be extinguished.

The court shall order the Civil Registrar to cancel the amended certificate of birth of the foster child and restore his or her original birth certificate or special certificate of civil registry.

All the foregoing effects of rescission of the foster family relationship shall be without prejudice to the penalties imposable under the Penal Code if the criminal acts are properly proven.

ARTICLE VII VIOLATIONS AND PENALTIES

SECTION 21. *Violations and Penalties.* - All the violations and penalties prescribed under Sections 21 and 22, Article VII of Republic Act No. 8552, the Domestic Adoption Act of 1998, shall govern the rules and procedures of foster family care.

ARTICLE VIII FINAL PROVISIONS

SECTION 22. *Adoption and Foster Family Care Resources and Referral Office.* - The Adoption Resources and Referral Office under the DSWD shall be expanded, renamed and re-established as the Adoption and Foster Family Care Resources and Referral Office with the following additional functions: (a) monitor the existence, number and flow of abandoned, stateless and legally- free Filipino children who are repatriated and prospective foster parent(s) so as to facilitate their matching; (b) maintain a nationwide information and educational campaign on foster family care, foster parenting and the foster family relationship; and (c) keep records of all foster petition proceedings. The services of additional child-caring and child-placement experts from the public and private sectors shall be contracted to man the expanded office.

SECTION 23. *Implementing Rules and Regulations.* - Within six (6) months from the promulgation of this Act, the DFA, DSWD, Council for the Welfare of Children, the Office of Civil Registry General, the Department of Justice, Office of the Solicitor General, and two (2) private individuals representing child-placing and child-caring agencies shall formulate the necessary guidelines to make the provisions of this Act operative.

SECTION 24. *Appropriations.* - Such sum as may be necessary for the effective implementation of the provisions of this Act shall be included in the General Appropriations Act of the year following its enactment into law and thereafter.

SECTION 25. *Repealing Clause.* - Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary

to, or inconsistent with the provisions of this Act, is hereby repealed, modified, or amended accordingly.

SECTION 26. ***Separability Clause.*** - If any provision of this Act is held invalid or unconstitutional, the other provisions not affected thereby shall remain valid and subsisting.

SECTION 27. ***Effectivity Clause.*** - This Act shall take effect fifteen (15) days following its complete publication in any newspaper of general circulation or in the Official Gazette.

Approved,