

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Family Division

2025/FAM/adn/00629

IN THE MATTER OF AKB (AN INFANT)

AND

IN THE MATTER OF THE ADOPTION OF CHILDREN'S ACT, CHAPTER 131

BETWEEN

NA

Applicant

AND

AKB

(By his Guardian Ad-Litem)

Infant

Before: The Hon. Madam Justice Cheryl E. Bazard KC

Appearances: Ms. Regina Bonaby for the Applicant

Mrs. Lilian Quant-Forbes as Guardian *ad litem*

Hearing Date: 6 August, 2026

Family Law – Child – Adoption – Welfare of the Child – Policy considerations – Applicant is a Bahamian citizen with US permanent residency status – The Minor is a Bahamian citizen residing undocumented in the United States – Whether granting the order would be proper in the circumstances.

RULING

Background Facts

1. The Applicant, NA, wishes to adopt AKB, a Minor (“the Minor”) who is the paternal biological nephew of NA, pursuant to the provisions of the Adoption of Children Act, Chapter 131 of the Statute Laws of the Commonwealth of The Bahamas (“the Act”).
2. The action was commenced by Originating Summons filed on the 29th December, 2025 seeking an Order that:-

- a. Lilian Quant-Forbes be appointed Litigation Guardian for the purpose of safeguarding the interest of the infant.
 - b. The Applicant be authorized to adopt the infant during his minority or until further Order pursuant to section 20A of the Child Protection (Amendment) Act 2014, Chapter 132.
 - c. Costs of the application be provided for.
3. The Statement in Support was filed on the 30th June, 2026 and the Affidavit in Support was also filed on the 30th June, 2026.
4. AKB's biological parents LKB and FSC consented to the application by NA. AKB's biological father, LKB and NA, the Applicant, are brother and sister.
5. By consent to act as Litigation Guardian filed on the 17th March, 2026, Lilian Quant-Forbes consented to act as Litigation Guardian for the minor. By Order made 22 July, 2026, Lilian Quant-Forbes was appointed as Guardian ad Litem of AKB for the purposes of safeguarding his interest.
6. AKB is a male child born on 23rd September, 2010 in The Bahamas and is a Bahamian citizen. The Applicant is a Bahamian citizen and United States Permanent Resident.
7. Both of AKB's biological parents are Bahamian citizens. The biological parents were not married to each other. No evidence has been presented that an affiliation order has been made in respect of the biological father.
8. According to the Affidavit in support, NA has had custody and care of AKB from birth and throughout his earlier years. AKB resides in the United States with NA and is presently attending high school. AKB does not have a valid permit to reside in the United States of America and is undocumented.
9. There is also exhibited to the Affidavit of Support, an Affidavit of Legal Guardianship of LKB, the biological father and EDB-G, a cousin of the Minor that purports to give legal guardianship to the Applicant. The Affidavit is sworn on the 9th November, 2022 before Tyrone William Palmer, J.P.
10. On the 22nd July, 2026, the Guardian ad Litem report which was prepared by Lilian Quant-Forbes, a former director of the Department of Social Services who retired on the 1st April, 2025 was filed and supported the adoption of AKB and declared that she is satisfied that an adoption would be in the best interests of the minor's welfare.

11. According to the guardian ad litem report, the minor has been living with the Applicant since 2021 and is in the 9th grade. This is in contrast to the time period noted in the Affidavit of the biological parents *supra*.
12. At page 4 of the report and at paragraph 16 of the report, it is stated that:

“The parents consented to the adoption because they wish for the Infant’s status to be regularized with the Applicant. Each of their consent was given without pressure from others.”
13. In the report, RN, the fiancé of the Applicant stated that:

“.....he wholeheartedly supports Ms. [A], in her application to adopt [AKB] because he understands that [AKB] would not be allowed to remain in the United States undocumented for much longer.”
14. Under the rubric, “Motivation for adoption and discipline”, the report notes, “Ms. [A] shared that she experienced being undocumented in the United States and she does not want [AKB] to continue to be undocumented. She stated that she would be doing [AKB] a major dis-service if she does not do all that she can to get him regularized in the United States where he has spent the majority of his life.”
15. The interviews with the biological parents by the guardian ad litem notes that, “They agreed to the adoption because [AKB] and the Applicant share a close bond and they want [AKB]’s status to be regularized with Ms. [A].” They went on to further state, “Over the years [A] wasallowed....to reside with the Applicant for longer periods with the last time being in early 2021....”

ISSUES

16. The issues to be determined are:
 - i) Whether it is in the minor’s best interests to be adopted by NA;
 - ii) Whether the application for adoption ought to be dismissed for public policy reasons.

THE LAW

17. Section 3 of the Act provides as follows:-

“3. Upon an application in the prescribed manner being made by any person desirous of being authorized to adopt an infant who has never been married, the court may, subject to

the provisions of this Act, make an order (in this Act referred to as an adoption order) authorizing the applicant to adopt the infant, and it is hereby declared that the power of the court to make adoption orders shall include power to make an adoption order authorizing the adoption of an infant by the mother or father of the infant, either alone or jointly with her or his spouse.”

18. Section 17(2) and (3) of the Act provides further:

“17.(2) Without derogating from subsection (1) where the guardian ad litem in the adoption proceedings is not a representative of the Department responsible for social services, **no adoption order shall be made** unless the court is satisfied that a copy of the originating summons in the proceedings together with the statement containing the evidence in support of the application have been served within three days of its filing in court upon the Director of Social Services. [Emphasis added].

(3) The Director of Social Services shall be entitled to be represented at the hearing of the originating summons.”

19. Rule 5 of the Adoption of Children Rules (“the Rules”) provide as follows:

“5. Upon appointment a copy of the summons shall be served upon the guardian *ad litem* who shall thereupon enter an appearance for the infant.

20. Rule 6 of the Rules provides that:

“6. At the time of entering such appearance the guardian *ad litem* may apply for and the judge may order an undertaking to be given by the applicant to pay such costs as may become payable under section 18 of the Act. Such undertaking may be in Form 2.”

21. Rule 9 of the Rules provides that:

“9. In any case where the infant has been placed in the care and possession of the applicant the guardian *ad litem* shall, as soon as practicable after he has entered an appearance, serve a notice in Form 5 on any parent or guardian of the infant who has signified his consent to the making of an adoption order.”

22. Rule 12 of the Rules provides that:

“12. The Applicant shall obtain an appointment for the hearing of the application within 14 days after being notified by the guardian ad them (sic) that he has made his report to the Court.

23. Rule 13 of the Rules provides that:

“13. On the application being adjourned to the judge, the guardian ad litem shall serve a notice in Form 6 on every person whose consent to the order is required under sections 6 and 7 of the Act.”

24. Section 3 of the Child Protection Act, Chapter 132 (“the CPA”) provides:

“(1) Whenever a determination has to be made with respect to-

(a) The upbringing of a child; or

(b) The administration of a child’s property or the application of any income arising from it, the child’s welfare shall be the paramount consideration.

(2) In all matters relating to a child, whether before a court of law or before any other person, regard shall be had to the guiding principle mentioned in subsection (1) and that any delay in determining the question is likely to be prejudicial to the welfare of the child.”

25. In *Milton McPhee and Sheriffa McPhee v. Sherica Kentanya Rose (a child) SCCivApp. No. 192 of 2019*, at paragraph 16, Isaacs JA, as he then was, stated:

“It must be remembered that the adoption process is an entirely statutory construct.” He went on at paragraph 20:

“The Court concluded at paragraph 16 that “A decision thus made ultra vires would, in our view, be a legal nullity.”

26. In *Re K (A Minor) Adoption Order Nationality* 1995 Fam. 38, Hobhouse LJ observed that: “The court must evaluate what will best serve the need to safeguard and promote the welfare of the child throughout its childhood and take this aspect into account as the primary consideration in deciding whether or not to make the adoption order. Where the child is young, the judge’s evaluation of this aspect is likely to be determinative and it would have to be a strong consideration of public policy which would displace it. Where....the welfare issue is negligible, it may be difficult for the applicant for the adoption order to find grounds which are sufficient to counterbalance the public policy considerations of not allowing a right of entry or abode to be acquired....”

Analysis and Discussion

27. The Summons for hearing to appoint the guardian ad litem was filed on the 29th June, 2026 returnable on the 22nd July, 2026.

28. The Memorandum of Appearance of the guardian ad litem is dated 16 March, 2026 and filed on the 17th March, 2026, some 4 months prior to her appointment.

29. The Undertaking to pay costs is likewise dated the 16th March, 2026 and signed by the Applicant and filed on 29 June, 2026.

30. There is no evidence that the guardian ad litem has served a notice on any parent who has signified consent in contravention of Rule 9 of the Rules.
31. The guardian ad litem report is dated 22nd June, 2026 and filed on 22 July, 2026. As such, Ms. Quant-Forbes had no legal mandate, jurisdiction or authority to investigate the minor's family background at the time of the investigations and making of the report. Such mandate would only be triggered after the formal appointment by the Court.
32. The report that is therefore before the Court, while considered, has not complied with the Rules.
33. Further, in contravention of Rule 12 of the Rules, the applicant filed the notice of appointment to hear the originating summons on the 22nd July, 2026 when the Order appointing the guardian ad litem was filed on the 24th July, 2026.
34. There is no evidence before the Court that rule 13 of the Rules has also been complied with.
35. When a Bahamian court is moved to evaluate an adoption involving a child who is not physically present or is a foreign resident undocumented elsewhere, primary policy considerations include the best interests and welfare of the child, the true motive behind the application and balancing child welfare against public policy. This case presents the Court with highly specific, intersecting legal and policy considerations. The Court also has to evaluate the practical effect and necessity of a Bahamian order when the child resides abroad in a foreign jurisdiction, namely the United States of America. The Court is faced with the issue of extraterritoriality and the "absent child" dilemma. The Court must weigh the policy implications of granting an order for a child who is physically absent from The Bahamas and has been so for the past 6 years and is residing undocumented in the United States. While there are no statutory restrictions preventing a non-resident Bahamian from applying, the court must evaluate the adopter's status as a U.S. Lawful Permanent Resident (Green Card holder) especially as the issue of regularization of status does appear to be the motivating factor for adopting the minor in this case.
36. In *AN and MN v. CG 2017/FAM/adn/FP/00206* and in particular at paragraph 22, reference is made to *In Re H (A Minor)* and the dicta of Justice Hollings at page 33:

"What then should the approach of this court be in applications of this nature? Clearly, it must pay great regard to the "immigration decision" and in particular consideration of public policy and, where relevant, national security. It must be on its guard against the possibility of abuse...It must treat welfare as the first

consideration, outweighing any one factor but not all factors. If the court considers on the evidence and information before it that the true motive of the application is based upon ...the right of abode rather than the general welfare of the minor then an adoption order should not be made...In every case it is a matter of balancing welfare against public policy and the wider the implications of the public policy aspect the less weight may be attached to the aspect of the welfare of the particular individual. [Emphasis added.]

37. The welfare of the infant remains the paramount statutory consideration. The key policy considerations in this scenario focus heavily on the following factors: In balancing the welfare of the Minor, the court must verify if the adopter intends to raise the child in the United States or return to The Bahamas. All the evidence points to NA remaining in the United States as she is established there through home ownership, employment, her biological child and her consideration for marriage to her fiancé. If the child remains undocumented in the United States, the court must consider whether a Bahamian adoption order truly enhances the child's practical welfare, or if it leaves him in a legally vulnerable position.
38. Counsel has via an email dated 28 July, 2026 directed the court to the website of the U. S. Embassy in The Bahamas, regarding adoptions. It was noted there that "...once the child is adopted by a **citizen** of the United States, the child is automatically naturalized once the stipulated requirements are met." AN is a Bahamian citizen who holds U.S. permanent residency, i.e. she is a green card holder. As such, AKB will **not** automatically become a U.S. citizen and will remain undocumented until further application/s. There is nothing to suggest that the Minor will be protected from removal or will not "age out" before gaining legal status.
39. Should the adoption order be granted and the application/s in the United States fail, AKB's parent will reside in another jurisdiction while he has to return to The Bahamas. The Minor will also retain his Bahamian citizenship until a valid U.S. naturalization process is eventually completed.
40. Counsel referred the Court in her email to *JB and DC (a Minor) 2021/FAM/adn/0035* which is distinguishable as the parties (adopter and child) were both resident in The Bahamas.
41. In *AN and MN v. CG 2017/FAM/adn/FP/00206*, at paragraph 16, the Court noted:
"...the question must be asked, what is the true purpose of this application, when in fact the Minor had an opportunity to obey the laws....And now they

come before the Court in a very hastily fashion, urging upon all parties to resolve the matter...”

42. In the matter at hand, ostensibly AN had legal custody via the Affidavit of Legal Guardianship since November, 2022.
43. Because the Minor is 15 years old, the court will take into consideration the 15-year-old's explicit consent and perspective on being adopted by the applicant pursuant to section 8 of the Act. In the guardian ad litem report, it was reported that AKB's views were that “.....the best decision [my] parents made was to allow [my] Aunty [D] to adopt [me.]” What the Minor cannot be expected to understand at this stage is the potential implications and complications of an intercountry adoption.
44. It should be mentioned here that the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (“Hague Adoption Convention”) is very clear on the issue of taking a child to the United States first and adopting them after arrival. Under the Convention, to which the United States is a party, a U. S. resident must strictly comply with the Hague Rules, which require processing **before** the child enters the United States. An undocumented child already living in the United States subverts this mandatory framework. I hastily add that The Bahamas is not a party to the said Convention.
45. As stated earlier, AN has been an undocumented minor and adult in the United States and despite this, has permitted AKB to reside with her undocumented. Additionally, there is concern that if the Minor is adopted, there is the possibility that he may not attain status. This raises the question as to whether it is in his best interests that his parent (should the adoption order be granted) is domiciled and resident in a jurisdiction that he is not allowed to be resident in.
46. Section 11 of the Act states:

“Upon an adoption order being made all rights, duties, obligations and liabilities of the parent or parents, guardian or guardians of the adopted child in relation to the future custody, maintenance and education of the adopted child, including all rights to appoint a guardian or to consent or give notice of dissent to marriage, shall be extinguished and all such rights, duties, obligations and liabilities shall vest and be exercisable by and enforceable against the adopter in lawful wedlock, and in respect of the same matters and in respect of the liability of a child to maintain its parents the adopted child shall stand to the adopter exclusively in the position of a child born to the adopter in lawful wedlock.”

47. In the report, it states that AKB “has a relationship with his biological mother whom he has not seen in years. He has contact with his father however, he has not physically seen him in years either.” Later in the report, it continues, “[A], and his parents maintain contact through WhatsApp video/audio calls and messages. He does not share a close relationship with his siblings who he has not seen in years.”
48. The minor has not been rejected by his biological parents in The Bahamas. If he were returned to The Bahamas, there is no evidence that he would not have a home to go to. There is no evidence of the existence of any negative factors surrounding the minor’s life with his biological parents.
49. Having weighed the welfare of the Minor and the public policy issues I am satisfied that this is not a proper case to make an Adoption Order.
50. There is no doubt that AN genuinely wishes to take care of the minor, her nephew. However, while I am of the belief that she has provided financial support and assistance for the child and has acted in loco parentis as provided for in the Affidavit of Legal Guardianship, it appears to me that the reason for adopting the Minor is really to ensure that he is permitted to remain in the United States with the hope that his undocumented status can be regularized. It is not lost on this court that the granting of an adoption order may place the minor in a precarious position.
51. It should also be noted that the Rules have not been followed in this application.

Disposition

52. In the exercise of my discretion, I therefore refuse to grant the adoption order sought herein by the Applicant.
53. The originating summons is therefore dismissed.
54. The Applicant is to pay the costs of the guardian ad litem.

Dated this 6th day of August, A.D., 2026

The Honourable Madam Justice Cheryl Bazard KC

