

 PUTRAJAYA: The Federal Court has ruled in a landmark judgment that a biological father has equal parental rights to his child born out of wedlock although the boy has been lawfully adopted by a married couple. Following this decision, the father filed in the High Court for reasonable access to the child and to ensure he is not taken out of the country by the adoptive parents. (Under common law, only the biological mother has exclusive parental rights to a child born out of wedlock.) The case came about after an American businessman, who fathered a child with a Malaysian woman, had sought a court order to determine his rights and validity of the adoption of his 11-year-old son by a Muslim couple. Chief Judge of Malaya Justice Arifin Zakaria and Federal Court judges Justice Zulkefli Ahmad Makinudin and Justice James Foong decided in the matter. Extracts of the judgment were read in open court on Jan 27. The full 45-page text was made available to The Star yesterday. In the judgment, Justice Foong said the rights of a biological father remained and were not extinguished despite the adoption of his illegitimate child under the Registration of Adoption Act in 2004. Justice Foong said the Bench maintained that the legal rights of the natural parent or parents remained as conferred by law. Under the Act, he said adoptive parents were merely granted the ♦custodianship, care, maintenance and educational right over the child. ♦ The court did not dispute the boy was illegitimate as ♦the plaintiff (businessman) and first defendant (the Malaysian woman) were not married to each other when he was born. ♦ It reinstated a High Court order that the boy's birth certificate be rectified to state the businessman was his natural father. The Federal Court also held the adoption of the boy by a Muslim couple remained valid under the law. Justice Foong said the adoption was properly registered after due process in accordance with the law. He added that the Guardianship of Infants Act (GIA) also applied to an illegitimate child. The adoptive parents were represented by lead counsel S. Ravichandran and lawyer Ng Chung Yee. Ng said the decision was a landmark one as ♦it has settled now that the amendment to the GIA, which came into effect on Oct 1, 1999, gives equal parental rights to both biological parents over an illegitimate child. ♦ On Sept 18, 2008, while the American businessman succeeded in his bid in the High Court to get a declaration that he was the boy's natural father and for the boy's birth certificate to be rectified to include his name, he and the mother failed in their bid to challenge the adoption and the religious conversion of the boy. Following an appeal last year, the Court of Appeal maintained the American was the natural father but reversed the High Court order that the boy's birth certificate be rectified. On April 1, the businessman filed papers at the High Court seeking, among others, reasonable access to the boy and to restrain his adoptive parents who are permanent residents of Australia from taking him out of the country and for his conversion to be declared null and void. The businessman contended that he, as the natural father, is the guardian of the boy and has a constitutional right to determine his religion. He said that it is in the welfare and interest of the child that he be granted access.