



Relocation Applications: Tips & Practical Guidance for cases involving the USA

Prime Minister Winston Churchill first described co-operation between the UK and the US as the “*Special Relationship*” – a term frequently cited in a whole host of varying political, economic and social circumstances. With over 200,000 Americans calling the UK home, it is perhaps little surprise that this Special Relationship has created so many *personal* relationships between Americans and Brits. The family courts are all too used to seeing families in which one or more parents hold ties to the US, and relocation cases are certainly no exception.

Cases in which one parent seeks the permission of the court to move permanently with the child to another country are some of the most challenging of all children cases. These cases, known as leave to remove or permission to relocate matters, are an increasingly specialist area of children law. With the court’s crosshairs firmly fixed on a child’s best interests above anything else, judges are tasked with the intricate exercise of sensitively balancing the proposed life for a child abroad against a child’s current arrangements. The decisions are, by their very nature, entirely binary; more to the point, a parent generally only has one shot at applying for, or successfully opposing, an application to relocate.

For this reason, a parent’s statement in support of their respective case can prove to be ‘*make or break*’; the utmost care must be given to their evidence, often from the very first letter sent out in any case. Moreover, no two relocation cases are the same; although parallels can be drawn between family situations, or between countries, each case ultimately turns on its facts and on its evidence.

Particular themes and patterns however do emerge, especially given the countries involved. Take, for example, the United States. Anecdotally, the number of cases between the UK and USA is growing significantly each year, with many parents seeking permission from the English court to



move stateside with their children. It is vital to have specialist, experienced advice ahead of contemplating any relocation case.

In any relocation case, the courts will expect to see a methodical, comprehensive breakdown of any proposed move, along with detailed proposals for flights, schooling, healthcare, and so on. Perhaps most crucially, serious thought must be given as to how and when any child moving to the US will see the left-behind parent and their side of the family. The practical arrangements behind the proposals for this contact are often the centrepiece of any proposal to relocate, with applicants needing to satisfy the court that the radical change to a child's ability to see the other parent will be not just maintained, but actively promoted in a reasonable, affordable and realistic way.

Whilst the above applies to virtually all relocation cases, the following issues are particularly pressing in UK-US relocation matters:



From the outset, the distance between the US and UK is something that must be confronted head-on. Even before one considers the size of the USA itself, the question of direct or near-direct flights, and their affordability, must be borne in mind. This may seem obvious at first blush, but parents will need to drill down on what the exact arrangements will be for a travelling child, door to door – from transit times and layovers to journeys to the airport. Heathrow to, say, New York, plus transit time and a further connecting flight within the US and a journey home thereafter may prove longer in total than a direct flight to a West Coast city. Applicants will need to satisfy the court that their proposals are feasible, not least in light of a child's age, experience of international travel, and how often they will see the other parent. Who will take the child across the Atlantic, and who will pick them up? Who will cover the not-insignificant costs of this travel? Depending on the age of the child and parental agreement, travel as an unaccompanied minor may be on the table, albeit how realistic this is, it varies enormously from case to case.

Similarly, time zones are a factor, especially for younger children. How realistic is it to propose a video call at a certain time, with a child 8 hours behind London in a West Coast state, alongside school, family life and other extra-curricular commitments?

Visa issues can prove to be some of the most challenging in any relocation case but are particularly pertinent in US matters. The American immigration authorities can impose particularly stringent conditions on visas and non-US citizens will want to be secure of



their position on entering the country to visit children resident there. Further complications can arise if visitors have criminal records or if they have overstayed their visas previously.

- In the same vein, consideration may need to be given to the financial and fiscal implications of obtaining US citizenship for a parent or for a child, not least given the US's global approach to personal taxation. Specialist advice must also be taken on any possible tax relief for obtaining US citizenship for children.

- The level of detail devoted to education in the new state will vary from case to case, not least in line with the child's age. Whilst an English judge will be unlikely to criticise the quality of education available in the US, a more nuanced approach must be considered. For example: What can replace government-funded under-5 childcare in the US? Will the subjects or extra-curricular activities held so dear by a child in England be available in the US? How will the child cope with learning new subjects in the US which may not feature in the UK curriculum? What about special educational needs provision? Is it worth considering British schools in the US, or American schools in the UK? For older children, will they seek to attend college in the US or university in the UK? If so, how will this be funded?

- There are some notable differences between the US and UK scholastic calendars, which plainly affect when a child can travel. The summer break tends to start earlier for



American students; as such, if a child were to reside in the US, what would the school vacation periods look like, and how can international travel or holidays to the UK be incorporated? Is a trip over the peak periods of Christmas or Thanksgiving affordable or even feasible? On the other hand, would half-term trips from the UK to the US work practically? Will the other parent be able to care for the child during these periods, bearing in mind their work commitments? How will a child, accustomed to celebrating one country's holidays, adapt to new customs – and how will that child be able to experience the other country's culture upon any move?

Should there be a mirror order in the US? This question applies equally in any application to relocate as it does to any case with the prospect of international travel. Generally speaking, a properly made court order in England is capable of recognition in the US through a procedure under the UCCJEA, which applies to all states bar Massachusetts. Thus, an order made in England is, in principle, as enforceable in Los Angeles as it is in London.

Consideration of mirror orders is vital, not least to show any English judge that the relationship between a moving child and a left-behind parent will be legally protected. Advice in the US state should be routinely considered in any case of this nature as local practice can vary significantly. Requirements occasionally found stateside, such as the signing of orders or of each and every paragraph of an undertaking, are virtually unheard



of in England.

● Conversely, given that the 1996 Hague Convention is not in force between the US and UK, an English court will not automatically recognise an American court order. Whilst there are vehicles for the mirroring of US court orders, the process is not as straightforward.

● If things do not go to plan and an order is breached, what will be the consequences of non-compliance? In terms of removal or retention after international travel, both the US and the UK are members of the 1980 Hague Convention, governing child abduction matters between both countries. The two countries have a strong working relationship, but whilst legal aid is usually granted in England to US applicants in abduction and indeed in access cases, what would be the legal costs for any action in the US?

● Upon any relocation from England to the US, the English court would generally deem the local court in America to take over jurisdiction in relation to a child living there. However, it is understood that American courts often seek to retain jurisdiction over a child that moves from the US to the UK. Clarification must be sought from lawyers at home and abroad in these circumstances, to prevent issues arising later down the line.

More than anything, all applications, agreements or defence to any application must be as well thought-out and detailed as possible, always demonstrating a detailed consideration of why the proposed move would or would not be in the child's best interests. The above points are simply the tip of the iceberg when it comes to putting forward a cogent and workable plan to relocate; addressing a plan to relocate in realistic detail reduces potential lines of attack. Given the enormously challenging, life-changing decision a case of this nature entails for any family, the



utmost care must be taken by both applicants and respondents from the very outset of the case.

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