



Relocations to Australia - lessons from *F v M*

The International Family Law Group LLP represented the successful mother in her application seeking permission to relocate permanently to Sydney, Australia, in a case that has now been reported as *F v M (relocation to Australia)* [2024] EWFC 381 (B). The case was heard by Her Honour Judge Vincent at Reading Family Court and her judgment has since been placed in the public domain. It is one of very few recent examples of permission to relocate being granted – not least to Australia.

This case involved an application made by the mother seeking permission to relocate to Australia with two children, aged 13 and 8. The father opposed her application, and sought a child arrangements order for the children to spend time with him on alternate weekends, once during the week in term-term and for half the school holidays.

A link to the judgment can be found here: <https://www.bailii.org/ew/cases/EWFC/OJ/2024/381.html>

Background

By way of background, the mother and father are both English nationals. They share two children together, referred to as Ben and Lara in the judgment. Ben was born in 2011 and Lara was born in 2016.

The parties separated in 2017 and divorced in 2018. The mother remarried in July 2019 to an Australian national, referred to as the step-father in the judgment. On all accounts, the children's step-father played a loving, central role in the children's lives. By contrast, the father's role in the children's lives was less involved.

Following a trip to Australia over Christmas and New Year of 2023/2024, the mother, step-father and children started discussing the prospect of moving permanently to Australia. A number of conversations were had with the father, who initially agreed to the children's relocation to Australia. Indeed, evidence suggested that he was seeking to relocate to Australia himself. The



mother and step-father meanwhile proceeded to resign from their jobs in England, and found school places for the children in Sydney. They secured a property in Australia, as well as tenants for their house in England. The children, as both parents accepted, were incredibly excited about the move.

The father, however, later reneged on his agreement and submitted an application to the court for a prohibited steps order to prevent the mother from taking the children out of the jurisdiction, and specifically to prevent their relocation to Australia. The mother then cross-applied for permission to relocate.

The final hearing took place over three days commencing on 26 November 2024. In addition to hearing evidence from the mother and father, evidence was also heard from the social worker who recommended against relocation.

The Judge, however, was convinced that on a welfare analysis the children's best interests were met by a move to Australia. She found the children were "*wholly invested in wanting to live in Australia*" and in joining their stepfather, who had already returned to his home country. Relocation to Australia was granted on 28 November 2024.

The Law

In cases where one parent seeks to relocate with a child to another country and this is disputed by the other parent, an application for leave to remove will be necessary. Whilst child arrangement matters can often be negotiated between parents, it is often difficult to reach a compromise in relocation matters. Relocation can have significant ramifications for the child's relationship with the 'left behind' parent; indeed, in the private law arena, few decisions are as complex and finely balanced as relocation cases are. International contact can be expensive and multiple trips to facilitate contact each year might not be affordable. The question as to whether a child should live in another country is inherently binary, although attempts should still be made to progress matters outside of court in accordance with the NCDR procedural rules.

The court does still maintain the power to grant permission for a parent to relocate with a child.

As with any application brought under the Children Act 1989, each case will be fact specific. For example, the country of intended relocation will be of particular relevance as increased geographical distance may further complicate logistics for contact with the 'left behind' parent.

When dealing with any leave to remove application, the court will need to determine whether the



relocation would be in the children's best interests. A section 7 report is often ordered in relocation cases to provide the Judge with welfare recommendations from either Cafcass or an Independent Social Worker. The court will consider the unique circumstances of each relocation application with reference to the welfare checklist set out at 1(3) Children Act 1989:

1. the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
2. his physical, emotional and educational needs;
3. the likely effect on him of any change in his circumstances;
4. his age, sex, background and any characteristics of his which the court considers relevant;
5. any harm which he has suffered or is at risk of suffering;
6. how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;
7. the range of powers available to the court under this Act in the proceedings in question.

Section 1(3)(c) Children Act 1989 is of particular relevance to relocation applications as moving to another country is arguably one of the most significant changes that a child can experience. To be successful in a relocation application, a detailed plan for relocation will need to be set out to show how this change of circumstances will be managed and how the children's needs can be met (as per s(1)(3)(b)) following the relocation. This should include a consideration of appropriate contact proposals with the 'left-behind' parent.

Relocation applications to Australia can be especially difficult in the light of the distance and costs of travel. However, the Court will most certainly consider relocation to destinations further afield if this fits with a child's best interests, in line with the welfare checklist and our established case law.

Partner, James Netto, and Associates, Georgina Huse and Rosa Schofield, represented the mother in this matter. Anita Guha KC of 7BR was instructed at the final hearing.

James Netto

james.netto@iflg.uk.com

rosa.schofield@iflg.uk.com

Georgina Huse

georgina.huse@iflg.uk.com



The International Family Law Group LLP

www.iflg.uk.com

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