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# Kent County Council v. PA-K and IA (a child) [2013]

## [2013] 2 FLR 541; [2013] EWHC 578 (Fam)

11/03/2013

**Court**
High Court (Family Division)

**Practice Areas**
International Children Law

**Summary**
International adoption – Clarification of implementation of English welfare plans in the USA. Consideration of apparent divergence of case law re "ordinary residence" and s.105(6) CA 1989 "disregard" provision.

**Facts**
The local authority applied for permission to remove a child from the jurisdiction to be placed with prospective adopters (who were British citizens, found to be still domiciled in England and Wales, but living in the USA and who had already adopted the child's older half sibling).

The mother played no part in the hearing and the desired outcome was agreed. The purpose of the judgment was to:

(i) provide complete clarity for the agencies involved here and in the USA as to how the English Court intends that the welfare plans for children are to be implemented; and

(ii) to describe the way in which an apparent divergence in case law relating to determining a child's 'ordinary residence' and the 'disregard' provision contained within s.105(6) of the Children Act 1989 has arisen."

**Held**
Pauffley J considered the "interplay" between UK and USA law. The options viable from a UK perspective (domestic adoption, based on the couple's domicile in the UK or a Hague Convention adoption, based on their habitual residence in the USA) did not accord with US law and policy, whilst the option proposed by the US authorities (for the child to be placed in the USA and adopted under US law) fell foul of the restriction in s.85 Adoption and Children Act 2002 ("ACA 2002") against "taking a child out of the UK for adoption".

Accordingly, the mechanism proposed was for the child to be placed with the couple as foster carers they could obtain US citizenship, following acquisition of which, they would be then be entitled to apply for a Hague Convention adoption.

The requirement in s. 42(2) ACA 2002 for the child to live with the prospective adopters for 10 weeks prior to any application being made could be satisfied outside the jurisdiction (and thus not offend against s.85 ACA 2002 ) if the removal was “temporary” pending a return to the UK

Pauffley J found no “impediment” to the “temporary” removal being for a period long enough to achieve the desired aim.

The requirements of section 2 of the inter country adoption convention (whereby, for the Hague application to be made, the child would have to remain habitually resident in England) could be satisfied – despite the plan for the child to live in the USA – by using section 105(6) of the CA 1989 which provided for any period of time during which the child was “looked after” to be disregarded in determining that child’s ordinary residence.

The attention of the court was drawn to a series of cases relevant to s.105(6), including (Re G (Adoption: Ordinary Residence) [2004] decided by Wall J (as he then was). Pauffley J declined the invitation to consider whether or not the case had been wrongly decided, simply noting that it was a decision at first instance and therefore not binding.

Accordingly, it was “straightforward” to give permission under s.28 ACA 2002 for the “time limited” removal sought.

**Permission**

Family Law Week