

IH (A Child) (Permission to Apply for Adoption) [2013]

[2013] EWHC 1235 (Fam)

14/05/2013

Barristers

James Shaw

Court

High Court (Family Division)

Practice Areas

Public Children Law

Summary

Application for permission to apply to adopt a child where the child had not lived with the applicants for three years out of the five preceding the application and the child's visa to the UK had expired. Permission refused.

Fact

The child, IH, and his parents visited the UK from Pakistan on the basis that they wished to visit his ailing grandmother. The parents returned to Pakistan, leaving IH in the care of his uncle and aunt, MM and RB, the applicants in this matter. The parents stated that they were unable to take care of IH and conferred parental responsibility upon the applicants.

At the time of this application IH had been residing with the applicants for only six months. The Secretary of State for the Home Department opposed this application on the basis that the requirement for the child to live with the applicants for three years was in place for an important purpose and this should not be contravened save in exceptional circumstances, which were not, the Home Office argued, present in this case.

Pauffley J conducted a balancing exercise between the position taken by the applicants and the Guardian, namely that they perceived the application to be one which was pure, that is that it was not made to circumvent immigration rules; that there were significant deficiencies in the care IH would receive in the parental home in Pakistan, against the way the application was made and "whether there is consistency and cohesion so as to reassure me as to sincerity and motivation". Of particular importance was that the application for permission to apply to adopt was made against a background of two unsuccessful immigration applications for leave to remain. In addition to this, the applicants had failed entirely to comply with the law and requirements relating to adopting a child from a foreign jurisdiction.

Held

Pauffley J found that there had not been an estrangement between IH and his birth family, but they were in frequent and regular contact. Essentially, the judge said, “there is no sense in which the Applicants have a true desire for their own reasons to adopt a child. They have five already. Their motivation, so it seems to me, is so as to help IH’s parents by giving him the chance of a better life in the UK.”

She added:

“I find it impossible to conclude, even if I were to leave on one side the many matters which cast doubt upon the good faith and integrity of the Applicants, that an adoption order would be in IH’s best interests.”

Permission

Family Law Week 