

Granting a Child Relocation Order to an Expatriate Parent

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I. Introduction

As Singapore becomes more globalised, there has been a significant increase in the number of international marriages.¹ However, these relationships are not immune to the trials and tribulations of marriage. If you and your expatriate ex-spouse are divorced, and they decide to return to their home country, you may wonder if they can take your child with them. You may also worry that they may resort to extreme measures and take your child overseas without your consent. What can you do in such a situation?

The golden thread in all matters relating to children is that their welfare is paramount.² Therefore, no matter what actions their parents may take, the courts will strive to ensure that the child's best interests are met.

II. Discussion

We will first examine the factors considered by the courts in a parental relocation scenario and whether the expatriate parent may take the child along with them. Second, we will discuss what can be done by the other parent if the expatriate parent resorts to desperate measures and abducts the child.

A. Parental relocation

In a divorce, the court makes orders pertaining to the welfare of the child under section 124 of the Women's Charter ("WC") regarding:³

- (a) Custody: Long-term decision-making; and
- (b) Care and control: Day-to-day decision-making.⁴

The court typically awards joint custody to both parents. In most cases, the child will reside with the parent awarded the care and control.⁵ However, where the expatriate parent is the one

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¹ Debbie Ong, *International Issues in Family Law in Singapore* (Academy Publishing, 2015) ("Ong"), at [8.1].

² Guardianship of Infants Act (Cap 122, 1985 Rev Ed) s 3; Leong Wai Kum, *Elements of Family Law in Singapore* (3rd Ed) (LexisNexis, 2018) ("Leong"), at [7.132]; Ong, *supra* n 1, at [9.2].

³ Women's Charter (Cap 353, 2009 Rev Ed) s 124.

⁴ Valerie J.C. Thean & Foo Siew Fong, *Law and Practice of family law in Singapore* (Sweet & Maxwell, 2016) ("Thean"), at [10.4.6].

⁵ *Ibid.*

with care and control, difficulty in obtaining approval for relocation may arise given that they make their day-to-day decisions for the child and the courts would have to therefore consider the child's relocation as well.⁶ Under section 126(3) of the WC, no person shall take the child out of Singapore for more than a month without the consent of both parents or leave of the court.⁷ Therefore, the expatriate parent must apply to the court to vary the custody order and approve a relocation application if they intend to relocate with their child.

However, courts may be reluctant to grant such orders as relocating threatens the ideal state of "joint parenting" given that the relocated child would have less interaction with the left-behind parent.⁸ However, if the courts were to maintain the status quo and frustrate the expatriate parent's plans, this may also result in negative effects on the child since the child's welfare is "inextricably intertwined with general well-being and happiness of the primary caregiver".⁹ As such, the courts would consider all pertinent facts and relevant circumstances to ensure that the child's interests are best met in granting or denying a relocation.¹⁰

Some considerations include:

- (a) Whether the relocating parent has significant connection to Singapore; and
- (b) Whether there will be a loss of relationship with the left-behind parent.¹¹

(1) Consideration: Relocating parent's connection to Singapore

Courts are more likely to grant permission for the child to relocate with the parent having care and control in cases where such parent was originally a "trailing spouse"¹² where they have no significant connection to Singapore and only moved here to follow their ex-spouse. In the case of *AZB v AYZ*,¹³ the Court allowed the child's relocation to the United States ("US") as the mother's emotional and psychological needs would be better taken care of in her home country.¹⁴ The ex-wife had no viable support system in Singapore, while in the US, she could "be comforted by the nurturing company"¹⁵ of her supportive and loving family and would find

⁶ *Ibid.*

⁷ Women's Charter (Cap 353, 2009 Rev Ed) s 126(3).

⁸ *UFZ v UFY* [2018] 4 SLR ("UFZ"), at [11].

⁹ *AZB v AYZ* [2012] 3 SLR 627 ("AZB"), at [14]; Ong, *supra* n 1, at [9.6].

¹⁰ S 3 GIA; *AZB*, *supra* n 9, at [14]; Ong, *supra* n 1, at [9.6].

¹¹ Ong, *supra* n 1, at [9.28]–[9.37]; Leong, *supra* n 1, at [7.131]–[7.134].

¹² *UXH v UXI* [2019] SGHCF 24, at [16]

¹³ *AZB*, *supra* n 9.

¹⁴ *Id.*, at [35] and [36].

¹⁵ *Id.*, at [29].

it easier to find a job and retain her independence. This would in turn ensure that she is better able to provide the requisite emotional support to her child to adapt to the new environment.¹⁶

(2) *Consideration: Effects of a relocation on the relationship between the child and the left-behind parent*

The concern is that the child will be deprived of a meaningful relationship with this parent since they will have significantly less interaction.¹⁷ Therefore, the court does consider the relocating parent's plans for access between the child and the other parent, such as scheduled holiday trips to Singapore or weekly videocall sessions.¹⁸ This helps ensure adequate interaction between the child and the left-behind parent, and minimise the impact of relocation.¹⁹ If such plans are in place, the courts are more likely to grant the application. However, "virtual access" to the left-behind parent alone is not determinative as it is not a replacement for personal contact with the child.²⁰

Nonetheless, it is important to note that, in practice, succeeding in one consideration does not guarantee the court's approval of a relocation.²¹ Rather, the courts take a holistic view based on the specific circumstances in determining whether a relocation is in the best interests of the child.

B. *International Child Abduction*

Where a relocation application has been denied, there have been incidents where the expatriate parent resorts to extreme measures and wrongfully takes the child out of the country with no intention of returning. Under these circumstances, such actions may constitute international child abduction. In such cases, the Hague Convention on the Civil Aspects of International Child Abduction ("HCICA")²² may be invoked to retrieve the child. The ultimate purpose of the Convention is to protect children from the harmful effects of their "wrongful removal or retention" and to establish procedures to ensure their prompt return to the State of their habitual residence.²³

¹⁶ *UYK v UYJ* [2020] 5 SLR 772, at [34]–[35].

¹⁷ *Ong*, *supra* n 1, at [9.2] and [9.37].

¹⁸ *UFZ*, *supra* n 8, at [12]–[14].

¹⁹ *Id.*, at [15].

²⁰ *Ong*, *supra* n 1, at [9.37].

²¹ *BNS*, *supra* n 9, at [20].

²² Hague Convention, (25 October 1980), Convention on the Civil Aspects of International Child Abduction ("Hague Convention").

²³ Hague Convention, preamble.

The left-behind parent should first identify the country that their ex-spouse has travelled to and determine whether the country is a signatory to the HCICA. Where the country is a signatory, the left-behind parent should apply for the child to be returned to Singapore and consider if their ex-spouse can invoke any of the available defences.

(1) *Signatory Countries*

There are two forms of assistance that one may turn to under the HCICA. First, the parent can make an application either to the Singapore Ministry of Social and Family Development, or the designated Central Authority of the country which the child has been abducted to for assistance to locate the child and facilitating a voluntary return of the child by the wrongful parent to their habitual residence.²⁴ The parties will undergo mediation to reach an amicable resolution.²⁵

Second, if a voluntary return is not possible, the parent may apply to the court for an order for the child's return.²⁶ The parent must prove that the child was a habitual resident of Singapore before they were wrongfully abducted. This can be analysed by looking at how integrated the child is to Singapore regarding their education, language, and culture.²⁷ This is usually an arduous process for the parents and the courts as there is often lack of evidence and conflicting testimonies provided in such disputes.²⁸ If the application is successful, the court can order the child's return to Singapore.

However, it is important to note that the expatriate parent may challenge the order by relying on defences under the HCICA.²⁹

(a) Article 12: It has been more than one year since the child's removal

(b) Article 13:

- a. The parent seeking the child's return had previously consented or subsequently acquiesced the child's removal; or
- b. There is a grave risk that the child may be exposed to physical or psychological harm if returned; or

²⁴ Hague Conference on Private International Law Website, Central Authorities – 28: Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, <<https://www.hcch.net/en/instruments/conventions/authorities1/?cid=24>> (accessed 10 November 2021).

²⁵ Hague Convention Art 7.

²⁶ *Ibid.*

²⁷ *TDX v TDY* [2015] 4 SLR 982, at [43].

²⁸ Olivia Claire Dobard, "Comment, The Supreme Court Address International Child Abduction under the Hague Convention," (2020) 32 *Journal of the American Academy of Matrimonial Lawyers* 435, at 441

²⁹ Hague Convention Art 12 and 13.

- c. The child is sufficiently mature to object their return.

Unfortunately, the reality is that it is often difficult for the local parent to retrieve their child. For instance, the abductor parent often deliberately conceals their whereabouts, which makes it difficult to bring an action within the “1-year period” in Article 12.³⁰

Moreover, there is no harmonisation between countries in the enforcement of court orders made pursuant to the HCICA. A recent case between a Singapore-based British citizen and their Japanese ex-spouse illustrated how Japan lacks effective measures to enforce such court orders.³¹ The parties had to instead rely on a legal provision typically used in commercial disputes to recognise the foreign court order and have the child returned to Singapore.

Therefore, even with the HCICA, it is not a simple process to retrieve an internationally abducted child. While there is recourse against the child’s wrongful removal, parents must be prepared for a long and tumultuous battle for their child’s return to Singapore.

(2) *Non-signatory Countries*

If the country that the expatriate parent has fled to is not a signatory to the HCICA, the left-behind parent is unable rely on the above recourse. Instead, the dispute will have to be determined by the law of the non-signatory country. Nevertheless, many countries still prioritise the child’s welfare in cross-border abduction cases.³² In such cases, we recommend seeking legal advice from lawyers in Singapore and the non-signatory country.

III. Conclusion

While it is recommended for parents to continue joint parenting, the court cannot discount the feelings and needs of expatriate parents on relocation. It is imperative to note that the Courts do take all matters into consideration before deciding whether relocation should be granted or whether, in extreme cases, the child should be returned to the other parent. Therefore, despite the potential distressing dispute, the welfare of the child remains the top priority.

³⁰ Robert D. Arenstein, “How to Prosecute an International Child Abduction Case under the Hague Convention”, (2017) 30 *Journal of the American Academy of Matrimonial Lawyers* 1, at 16.

³¹ Selina Lum, “Man succeeds in asking Japanese court to get ex-wife to return daughter to Singapore” *The Straits Times* (30 August 2021) <<https://www.straitstimes.com/singapore/courts-crime/man-succeeds-in-asking-japanese-court-to-get-ex-wife-to-return-daughter-to>> (accessed 10 November 2021).

³² Ong, *supra* n 1, at [8.97]–[8.98]; Sharanjit Kaur, “Singapore: Vanished Without A Trace – Managing Non-Hague Cases” (18 October 2019) <<https://www.mondaq.com/family-law/854902/vanished-without-a-trace-managing-non-hague-cases>> (accessed 10 November 2021).

