

## A word of warning regarding international child relocation

It's a common tale involving an international couple. Father is French and Mother is of dual British and Italian nationality. They met in London whilst studying at University and fell madly in love. They set up home in Paris and a baby boy followed. Father set up a successful business. Mother became the homemaker.

4 years later and things began to fall apart. Mother suggested a temporary separation. She would like to move back to London for 12 months. She remembers happier times there. She thinks the break would do them both good. Mother tells Father that their son would benefit from immersing himself in British culture and mastering another language. Mother's parents would be nearby to help with childcare. London is not too far away. Father can visit every weekend. Mother will return to Paris with their son every school holiday. It is only 12 months.

Father reluctantly agrees. Maybe the separation will benefit everyone.

Mother moves to London and enrolls their son in school. Mother finds a job and revels in the independence of earning an income again after being a kept woman for so long. Their son settles in London and makes new friends. He develops a close bond to his maternal grandparents.

Father sees his son every other weekend and during school holidays as agreed.

12 months quickly pass by.

Father demands that Mother returns to Paris with their son. That was the agreement. It has been 12 months.

Mother tells Father that their marriage is over. The period of separation has made her see things clearly now. She wants to remain in London with their son. Their son is happy in school. She doesn't want to leave her parents again.

Father is outraged. This is not what was agreed!

And here comes the word of warning...

International child abduction cases involve applications seeking the return of a child who has either been wrongfully removed or wrongfully retained from his or her country of habitual residence. In such cases, the Courts of the destination country must order the mandatory return of the child to the country of their habitual residence, except in very limited circumstances.

The concept of habitual residence is not defined but it must be shown that a child's presence in a particular country is more than a physical presence; it must reflect some degree of integration in a social and family environment. Generally, habitual residence must have a certain duration, which reflects an adequate degree of permanence.

Difficulty arises in wrongful retention cases, if the child's habitual residence changes to that of their destination country. In such circumstances, the parent seeking the return of the child cannot rely on

international child abduction laws and instead, must make an application for a return order under the domestic law of the destination country.

In the above scenario, it is likely that the parties' son has become habitually resident in London and as a result, Father cannot seek the mandatory return of the parties' son to Paris, in accordance with international child abduction laws.

Father instead has to make an application to the Courts of England and Wales for a return order. The Courts of England and Wales would consider this application on its merits, considering what is in the best interest of the parties' son.

Whilst it is not impossible for Father to successfully obtain an order that the parties' son be returned to Paris, it is not a given.

Parents should be mindful of this when considering whether to agree to the "temporary" international relocation of their children.