

Graeme Harrison secures permission for a Chinese mother to move to the PRC with her daughter

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Graeme Harrison a specialist child law barrister has successfully represented mother, a Chinese national, in the High Court on an application to remove a child permanently from this jurisdiction to the People's Republic of China. Although there have been a small number of cases involving such removals, none has yet been reported.



Father, a UK national, began working in the PRC in 2008. Within a few months of his arrival, he and mother met and started a relationship. They married in 2009 in the PRC and their only child, S, was born there in 2010. S's birth was registered at the British Embassy in Beijing and she acquired British citizenship by virtue of father's nationality. Since the PRC does not recognise dual citizenship, S could only claim Chinese citizenship (to which she was entitled because mother was a Chinese citizen) if she first renounced her British citizenship.

In early 2014, mother and father agreed that they should move permanently to the UK, hoping that this would improve S's life chances. Mother was granted a spousal visa to enter the UK while the family was still living in the PRC and shortly thereafter the family moved to the UK, settling on the south coast close to father's family.

Unfortunately, mother (who spoke little English) found it impossible to settle and the family eventually returned to the PRC in early 2015. Whether this was a permanent move or merely a temporary one remained a moot point.

When the marriage finally collapsed in mid-2015, father removed S from the family home in the PRC and took her to Hong Kong without mother's knowledge or consent. He promised to return S to mother's care if she agreed to a divorce in the PRC, a process that only required them both to sign a document in the presence of a Chinese civil servant. When mother refused, father brought S to the UK, again without mother's knowledge or consent. Immediately upon his arrival in the UK, father informed the immigration authorities of the breakdown of his marriage to mother.

With the assistance of the British Embassy in Beijing, mother traced S to the home of the paternal grandparents. Mother subsequently entered the UK on the spousal visa she had been granted in 2014 and applied for permission permanently to remove S to the PRC.

In the course of the proceedings, the parties obtained expert evidence concerning mother's immigration status in the UK and the enforceability of orders made in this jurisdiction in the courts of the PRC. That evidence was that:

1. Mother's spousal visa was no longer valid because her relationship with father had ended and she was liable to be removed from the UK unless she was able to regularise her immigration position. If she was able to satisfy the immigration authorities that she could speak English to the requisite standard and could support herself financially, then mother might be granted permanent leave to remain as the carer of a British citizen.
2. Orders made in this jurisdiction could in theory be enforced in the family courts in the PRC. However, the reality was that this would not happen because the courts in the PRC were highly resistant to recognising and enforcing the decisions of foreign courts.

This expert evidence was then supplemented during the final hearing when Theis J required the parties to obtain further evidence about the ease with which they would be able to obtain visas permitting them to travel to/from the UK and the PRC.

Having heard evidence over 3 days, Theis J granted permission to mother permanently to remove S to the PRC and made a defined contact order despite the expert evidence suggesting that her order would not be enforceable in the PRC.

In reaching her decision, Theis J was highly critical of father's behaviour in removing S to the UK without mother's knowledge and consent and of his attempts to undermine mother's immigration position by reporting the breakdown of the parties' relationship to the relevant authorities. Theis J found that father's plan had been to prevent mother from seeking S's return to her care by denying her ready access to the courts in this jurisdiction.

Commenting on the case, Graeme said that it emphasised the need for meticulous pre-trial preparation about every aspect of the proposed move.

That mother was a citizen of the PRC made it much easier for her to convince the court that her evidence about her potential earnings and living expenses was credible. If mother had been proposing to move to a country in which she had not previously lived and of which she had little experience, Theis J was at pains to emphasise that she would have carried out a forensic investigation into the viability mother's proposals.

Explaining her decision to make the defined contact order, Theis J said that it was appropriate to make the order as both parties had said in the course of their evidence that an order would provide them with some reassurance about future contact arrangements in the event that permission to remove was granted.

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