

International Families when Family & Immigration Law meet

By Annie Boxer

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I joined The International Family Law Group LLP in March 2020 as a Paralegal and completed my Training Contract in January 2023. As a part of my training I was seconded to Fragomen LLP, a leading immigration firm.

I started my secondment with little first-hand experience of immigration law, but with awareness of immigration issues which often arise in family law cases. I discovered that the Immigration Rules are very complex which can make them difficult to navigate. The law is constantly in a state of flux particularly given the transition of Brexit which marked a major change in UK immigration law.

What became apparent quite quickly to me, is that there are many circumstances when family and immigration law meet. This is almost inevitable in the context of international families and particularly since Brexit. We live in an age where international travel is so common and frequent and, in some cases, expected as a part of some employment. It is no wonder that there are now so many international families with children born into families with mixed heritages. The time for family solicitors to be alive to this cultural shift and the issues that may arise when international families are formed, or in the event of relationship breakdown, is now.

One common situation that often gives rise to potential immigration issues is that of separation and/or divorce. If one party's Visa status is dependent on their relationship with the other, there is a little-known obligation on the holder of the Visa and their partner/spouse to report the change in the relationship to the Home Office if the relationship has broken down. The report should be made as soon as possible to prevent jeopardising any future Visa applications and to limit any issues regarding finances and children. The dependent party may be able to apply to stay in the UK under a new Visa type. If that is not possible, the party will have to leave the UK and apply for entry clearance from their home country. Where a relationship has broken down due to domestic violence, it should be noted that the Immigration Rules contain very specific provisions too complex to set out here.

In a situation in which one party is applying outside of the UK for a work Visa which necessitates the relocation with their child(ren), the applicant parent will need to evidence that they have sole care and responsibility for that child and will continue to do so whilst living in the UK. This can be evidenced by producing various documents including, but not limited to, a Court Order confirming that the applicant parent has sole responsibility for the child (which from a family law perspective is rather unusual – the concept of '*sole responsibility*' is specific to UK immigration law) or a letter from the other parent confirming that they consent to the child living in the UK under the sole care and responsibility of the applicant parent, along with evidence of the applicant parent financially providing for the child.

Another complex area of family law which interests me, and which I suspect will become even more prevalent in the coming years given the rise in alternative family structures and advances in science, is surrogacy. There are many restrictions on surrogacy for intended parents in the UK; therefore, many intended parents chose to enter into international arrangements. As expected, complex immigration issues can often arise. The first and most pressing being how can the child enter the UK? In many cases, this will depend on the status of the intend parents. If the child is eligible for British citizenship, a UK passport will need to be applied for whilst abroad for the child to be able to travel to the UK. It should be anticipated prior to booking travel back to the UK that this can be a lengthy and complex process with various supporting documents needing to be submitted. This means that the intend parents will need to consider their own immigration status in the foreign country prior to their travel. If the child is not eligible to British citizenship, an entry clearance Visa will need to be applied for the child. The Immigration Rules do not presently specifically deal with a simplification of the surrogacy process.

It is essential that specialist immigration advice is sought as early as possible when potential immigration issues first arise. Time is needed for early, tailored advice to identify any potential issues in the hope these can be resolved. Most can be resolved but some unfortunately may be incapable of resolution.

I am very grateful for the time that I spent at Fragomen LLP and to those guiding me through these minefields. I now have a heightened awareness of the various immigration issues that might arise in family law cases and an increased understanding of the importance of pre-empting and finding solutions to these issues, especially in the context of international families.

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