Child Travel Abroad:
Legal Requirements for Proving Parentage and Documenting Consent

BY JULIA ALANEN

One-third of all children in the U.S. reside with only one biological parent. It is therefore no wonder that attorneys representing single and divorced parents are increasingly confronted with client requests to facilitate children’s cross-border travel. For example: an immigrant mother wants to bring her child to join her in the United States—the child’s father has been out of the picture since the child’s birth; a father and his

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girlfriend want to take his child of a previous relationship on a Caribbean cruise, but the child’s mother is adamantly opposed to the trip; a domestic violence victim wants to leave her abusive spouse and relocate, against his wishes, with their children to her country of origin; a mother preparing to send her daughter to visit her father abroad during a school break seeks assistance to ensure that he will send the child home following the visitation.

With international parental kidnapping on the rise and in the news, airline and airport authorities are under increased pressure to implement and observe more rigorous policies and procedures to ensure that children have proper travel documentation. The national lists serve as buzz with inquiries and misinformation about the minimum documentation required for a child to travel abroad unaccompanied, or accompanied by only one parent.

Before a child travels abroad, the parent or legal guardian should prepare to produce three distinct documents for the child: a valid passport, a travel visa, and formal written consent of the absent parent or the family court.

The Child Passport. Every U.S. citizen—even newborns and infants—must have a passport to travel internationally. In order to obtain a passport for a minor under age sixteen, the applicant must prove parenthood and consent for both of the child’s parents or guardians.

Proving a parent-child relationship is typically accomplished by submitting the child’s official birth certificate naming the child’s biological parents, an adoption decree bearing the adoptive parents’ names, or a court order that establishes parenthood or assigns legal guardians for the child.

Parents of children born in certain developing countries, however, may encounter great difficulty establishing parenthood. The foreign country’s embassy or consulate in the U.S., or the U.S. embassy or consulate in the foreign country, may be able to guide parents and attorneys seeking to obtain certified foreign birth or adoption records.

In the event that a child has only one known living parent (or legal guardian), or if one parent has been awarded sole legal custody of the child, that parent must produce evidence of sole legal authority to authorize the child’s travel or relocation. Evidence could include: the child’s birth certificate naming only one parent; a family court order awarding one party sole custody; an adoption decree listing only one adoptive parent; a court order specifically authorizing the child’s travel or relocation; or a death certificate in the event that the child’s other parent or legal guardian is deceased.

Child custody and guardianship laws vary dramatically from country to country. In some jurisdictions, anyone named as a parent on a child’s birth certificate has automatic legal custodial rights regarding that child by operation of law. In other jurisdictions, the father of a child born out of wedlock must legally establish paternity before he may exercise custodial rights over his child, even if he is named on the child’s birth certificate. Some countries’ laws prohibit a mother from taking her minor child abroad without the express prior consent of the child’s father or some other male family member.

In México, the country of origin of the largest immigrant population in the United States, the law differentiates between physical custody (the right to reside with a child and be the child’s physical caregiver) and legal custody (the right to make important decisions about the child’s welfare, including granting or withholding permission for the child to relocate abroad). Both parents have legal rights with respect to the child regardless of whether the parents are married, or whether the father has filed a formal family law action to lawfully establish paternity. This notion of operation-of-law custodial rights is referred to as Patria Potestad. In the case of a Mexican child, unless the other parent’s legal custodial rights have been formally terminated by a court or as the result of his or her death, the applicant parent must obtain the other parent’s express consent prior to relocating their child to the United States. Many other countries guarantee both biological parents similar operation-of-law legal custody rights.

The Travel Visa. Most countries require that foreign-national visitors procure a visa (the tourist visa is the most common) prior to their arrival. However, 36 countries have entered into a special visa-waiver program with the United States, thereby dispensing with travel visa requirements for visits of brief duration (90 days or less).

Child visa requirements essentially mirror the requirements for securing a child passport. When asking

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2 Many airlines are not yet taking adequate steps – and some express outright resistance – to develop and implement policies and procedures to ensure that children’s travel is duly authorized and to avoid facilitating parental kidnapping. See, e.g., Jury hits EJM for $27M in abduction trial, By Kirby J. Harrison, Aviation International News (June 2005), available at http://www.ainonline.com/ain-and-ainalerts/aviation-international-news/single-publication-story/browse/article?storyid=150&cache=1&lx=true&mode=SD (last visited Mar. 2, 2011). The article cites to court documents demonstrating that “an investigation [showed] that of 30 airlines queried, nearly 70 percent did not require consent forms and that such practice was not, as Streeter’s attorneys claimed, an industry standard.”


4 The records may need to be translated into English, and the translation certified and notarized. México’s state department, the Secretaría de Relaciones Exteriores (SRE), has helped parents of Mexican children to obtain certified birth records from México. In cases where the child’s birth was never officially recorded, the parent may have to present evidence and testimony to the relevant court or authority in order to legally establish parentage.

5 México’s federal laws on Patria Potestad are contained in Title 8, Chapter 1, Articles 411-424 of México’s Federal Civil Code.

6 The term “foreign national” refers to a non-citizen.

7 For a list of Visa Waiver Program (VWP) countries, see http://travel.state.gov/vwp/withoutorwithout senza_vwp (last visited Feb. 20, 2011). Nationals of VWP countries must meet certain eligibility requirements to travel without a visa on VWP; therefore, some travelers from VWP countries are not eligible to use the program.
a U.S. Consulate to issue a foreign-national child a visa to visit or join one parent in the United States, the applicant parent should be prepared to prove the parent-child relationships and produce evidence that the applicant parent has been awarded sole legal custody of the child or the child’s other parent (or the court) consents to the child’s travel or relocation abroad. Visa officers at the U.S. embassies and consulates abroad adjudicating requests to issue a foreign-national child a visa to enter the United States are guided by the U.S. Foreign Affairs Manual (FAM), which (somewhat cryptically) states:

If a child is immigrating to the United States with one parent and the other Parent is remaining abroad, the consular officer should ask the accompanying parent whether any legal impediment might exist preventing the departure of the child. If the response is inconclusive the consular officer should defer final action on the application and direct an informal inquiry to the local authorities in an effort to learn whether a violation of local law might be involved. If so, the local authorities would probably take action to prevent the child’s departure by lifting the child’s travel document or by other measures. If the local authorities do not take such action within a reasonable time, the officer should proceed with the consideration of the visa application. The same procedure should be followed if the officer has reason to believe that the family of an applicant is being abandoned.8

Because the FAM is rather vague on this point, some U.S. embassies and consulates have developed additional internal policies in order to comply with this regulation. The Foreign Service Institute (FSI), where U.S. consular officials are trained, stresses that a visa officer should not grant a child an immigrant visa if doing so would facilitate a parental kidnapping or interfere with the lawful custodial rights of the left child’s parents or legal custodians.9 For country-specific U.S. visa requirements for children, the applicant’s legal advocate should directly contact the appropriate U.S. consulate in the country where the child currently resides.10

Consent of the Absent Parent or the Court. In addition to procuring a valid child passport and travel visa, a parent arranging for a child’s travel abroad must document either the other parent’s or the court’s consent.11 This is typically achieved by producing one of three forms of documentation: a notarized affidavit of consent from the child’s other parent or legal guardian; a certified court order granting the accompanying parent sole legal custody of the child; or the court’s written consent to travel with the child. Absent written consent, the accompanying parent is likely to encounter difficulties with airline and border officials.

If the child’s other living parent (or legal guardian) retains custodial rights over the child, and does not consent to the child’s travel or relocation abroad, the applicant parent will have to bring a legal action against the other parent in the family court of the jurisdiction where the child is currently living. In some cases, the family court may issue travel or move-away orders authorizing the child’s travel or relocation despite the other parent’s objections. The court may require certain safeguards—such as proof of round-trip travel, posting of a bond, and so forth—to ensure the child’s return.12

Some travel officials are more rigorous than others about checking for appropriate consent forms. In recent years, a chamber of left-behind parents has successfully sued commercial and private aviation companies and other third parties for facilitating or failing to prevent international parental kidnappings. A Connecticut jury sent one charter airline a $27M message about how seriously employees ought to take the obligation to assess, prior to departure, a parent’s right to travel internationally with a minor child.13 The jury awarded $10 million for negligence and aiding custodial interference, and $17 million for a resultant 22-month loss of relationship between the left-behind mother and her children.

A Texas jury handed down a $175,000 judgment against a mosque that facilitated a parental abduction to the United Arab Emirates.14 In New Jersey, third-party-defendant grandparents settled for $150,000 for their role in facilitating the wrongful retention of their child.


10 For a complete list of U.S. embassies and consulates, visit [http://www.usembassy.gov/ (last visited Feb. 27, 2011)]. (The U.S. Consulate in Ciudad Juarez, Mexico can be contacted by submitting an electronic inquiry at [http://ciudadjuarez.usconsulate.gov/feedback-form.html (last visited on February 17, 2011), or by calling 011.52.477.788.7070 (international charges apply) or 1.900.476.1212 (a toll charge applies).) If a non-U.S. citizen child seeks to permanently relocate to the United States, the family will need to consult a U.S. immigration law specialist in order to ensure that the child secures the appropriate visa type in order to avoid violating U.S. immigration laws.

11 In the event that one parent is prepared to consent to the child’s travel abroad accompanied by – or to visit – the other parent, both parents should, at a minimum, sign and notarize a consent form specifying the necessary permissions, the destination country or countries, and the purpose and duration of the child’s trip. For a sample affidavit, see, Permission for Minor Child to Travel Outside of the United States, available at http://www.state.gov/documents/organization/86815.pdf (last visited Feb. 20, 2011). If the response is inconclusive the consular officer should defer final action on the application and direct an informal inquiry to the local authorities in an effort to learn whether a violation of local law might be involved. If so, the local authorities would probably take action to prevent the child’s departure by lifting the child’s travel document or by other measures. If the local authorities do not take such action within a reasonable time, the officer should proceed with the consideration of the visa application. The same procedure should be followed if the officer has reason to believe that the family of an applicant is being abandoned.

12 For international parental kidnapping prevention literature and resources visit the Global Justice Initiative, Inc. (GJI) e-library at www.globaljusticeinitiative.org (last visited Mar. 2, 2011).


grandson in Brazil from the U.S.-based custodial father.\textsuperscript{13}

The U.S. Government Accountability Office (GAO) is conducting a study on cooperation of the airline industry in international child abduction cases.\textsuperscript{16} In the wake of these lawsuits and under heightened scrutiny, airline and airport authorities are under increasing pressure to step up their vigilance. Parents and their counsel should always check ahead with the airline or cruise line that will transport the child and inquire into their relevant child-travel restrictions and practices.

**International Parental Kidnapping.** Child travel restrictions pose a daunting obstacle for many parents. For example, a battered woman who has fled a violent spouse or partner may find the idea of contacting her child’s abusive father to request move-away permission—or returning in order to sue him in the foreign family court—a terrifying prospect and an onerous burden. The temptation to commit passport or visa fraud to avoid confronting the other parent can be powerful, but is ill-conceived.

Parental kidnapping is an extraditable criminal offense in some countries, and many countries have ratified the 1980 Hague Convention on the Civil Aspects of International Child Abduction.\textsuperscript{17} The U.S. has taken a decisive stance against parental kidnapping—it is a federal offense, it has been criminalized in every state, and it constitutes a ground of excludability under the U.S. Immigration and Naturalization Act (INA).\textsuperscript{18} An abducting parent risks facing civil or criminal prosecution for parental kidnapping or custodial interference and, if


\footnotesize{\textsuperscript{16} See, Committee Reports, 110th Congress (2007-2008), House Report 110-331, Section 809, mandating a GAO study on cooperation of airline industry in international child abduction cases. Available at http://www.congress.gov/cgi-bin/cpquery/R?cp110:FLD010:@1/hr331 (last visited Mar. 2, 2011).}


\footnotesize{\textsuperscript{18} U.S. Immigration and Naturalization Act § 212(a)(10)(C). Unilaterally relocating a child in violation of the child’s other parent’s legal rights could trigger a CIS finding of poor moral character on the part of the taking parent.}

\footnotesize{\textsuperscript{19} To register a U.S. citizen child with the Children’s Passport Issuance Alert Program, visit [http://travel.state.gov/travel/cis_pa_tw/cis/cis_1753.html](http://travel.state.gov/travel/cis_pa_tw/cis/cis_1753.html).}

\footnotesize{\textsuperscript{20} For an explanation of dual nationality, visit the U.S. State Department online at [http://travel.state.gov/travel/cis_pa_tw/cis/cis_1753.html](http://travel.state.gov/travel/cis_pa_tw/cis/cis_1753.html).}

\footnotesize{\textsuperscript{21} Attorney Preston Findlay, Counsel, Missing Children Division at the National Center for Missing & Exploited Children, can be reached at jfindlay@ncmec.org or at (703) 837-6012. www.missingkids.com. To report a child missing, contact NCMEC’s hotline at 1 (800) 843-5678 (hotline operators are available, in English and Spanish, around the clock).}

\footnotesize{\textsuperscript{22} Contact the State Department’s Office of Children’s Issues at (888) 407-4747 or www.travel.state.gov.}

\footnotesize{\textsuperscript{23} Although most civil and criminal parental kidnapping laws (and the 1980 Hague Convention) have a built-in rebuttable affirmative domestic-violence defense, abuse can be difficult to document and prove. Under the 1980 Hague Convention, if the child’s country of habitual residence has adequate protective laws in place, a court may elect to send the child home. Unilaterally taking a child abroad in violation of the legal rights of the other parent can trigger serious consequences.}

Parents concerned about international parental kidnapping can take steps to protect their children. The U.S. Department of State’s Office of Children’s Issues administers a Child Passport Issuance Alert Program (CPIAP).\textsuperscript{19} CPIAP allows a concerned parent (or legal guardian) to register for advanced notification when the child’s other parent (or legal guardian) applies for a U.S. Passport for the child. CPIAP does not necessarily prevent parental abduction, rather, it is a tool that may enable a concerned parent to predict an abduction early enough to take measures to prevent the abduction.

Most international parental abductions involve dual-national children (children whose parents are citizens of two or more different countries).\textsuperscript{20} Dual-national children may be eligible for two passports, one from each country of which the child is a citizen. A family court may discourage, but cannot prevent, a foreign embassy from issuing a passport to one of its own nationals. Some foreign embassies will decline to honor U.S. family court orders prohibiting child passport issuance.

To report a child’s abduction, or for legal technical assistance to prevent an international parental kidnapping, contact the Family Abduction Unit of the National Center for Missing & Exploited Children,\textsuperscript{21} and the U.S. Department of State, Office of Children’s Issues.\textsuperscript{22}