

E-briefing

Intending to relocate your children from Singapore? – What you need to know.

With the advent of modern travel and an increasingly connected world, the number of international marriages and families has increased. Families may move from their original domicile where the marriage was celebrated and set up roots in a new country for various reasons such as career opportunities for the main breadwinner or a joint decision made by the family. When the marriage breaks down and one spouse wants to return to his or her home country with the children, the specter of relocation of the children arises.

In this Question & Answer article, our Family and Divorce partner Ivan Cheong along with Senior Associate Shaun Ho examine the factors considered by the Singapore Courts in any relocation application and answer questions pertaining to relocation that they have frequently encountered. This article is informative and not meant as a substitute for legal advice from qualified and experienced family lawyers.

1. *What is an application for leave to relocate?*

An application for leave to relocate is an application by a party for the Court's permission to leave the country, whether on a temporary or permanent-basis, with his / her child / children. An application for leave to relocate has to be taken out if the child's other parent does not agree to the intended relocation. There is no need to take out such an application if both of the child's parents agree to the intended relocation.

2. *Must I have care and control before I can apply for leave to relocate with the child?*

Yes. Only the parent with care and control can apply to relocate with the child. This means the parent with whom the child resides and who gets to make the day to day decisions for the child. If you do not have care and control but nevertheless wish to relocate with the child, you will need to apply for care and control (or to vary an existing order giving your spouse care and control) alongside your application for leave to relocate with the child. The Court will decide both issues together, but is highly unlikely to allow you leave to relocate with the child unless it also grants you care and control of the child.

3. *If I have sole custody of the child, do I still need to get my ex-spouse's permission, or leave of Court, if I want to relocate with the child?*

Yes. Sections 126(3) and (4) of the Women's Charter (Cap. 353) provide that once an order for custody, care and control has been made in respect of a child, a person having custody, care and control of the child can bring the child overseas for a maximum period of 1 month (subject to the terms of the order). Accordingly, even if you have sole custody of the child, you will need to get your ex-spouse's permission or the leave of Court before you would be allowed leave to relocate your child overseas.

4. *I am filing an application to relocate with the child overseas. How much of my plans must I have in place before I file?*

Your application should be as comprehensive as possible, because the Court needs to determine whether the intended relocation is in the child's best interests. Any crucial details that are not accounted for in the application may result in the Court making the finding that the planned relocation is not in the child's best interests. The Court might also come to the conclusion that the relocation plan was not thoroughly thought through, and that the relocation is sought for ancillary purposes (e.g. to deprive the other parent of time with the child).

Your plans should include details such as

- a. Where you and the child will be staying;

- b. Where the child will study;
- c. How the child will be cared for;
- d. Whether you have already secured a place of residence and a place in the school for the child; and
- e. When the relocation is intended to take place.

This list of factors is not exhaustive and you should consult a qualified family lawyer on whether your intended plan to relocate with your children overseas would be regarded as being in their best interests.

5. I am not married to the father of the child. Do I still need to seek his permission (or leave of Court) to relocate overseas with the child?

Yes. Although under antiquated common law a child who is born to unmarried parents is a child of the mother and not of the father (i.e., the father has no rights over the child), many countries these days recognize that unmarried fathers have rights and responsibilities over their children. Such fathers can apply in the destination country for the return of the child under the Hague Convention on the Civil Aspects of International Child Abduction or under statutory or common law. It is thus a prudent practice to have the Court sanction your intended relocation even if you are not married to the father of the child.

Child's / Parent's views

6. My ex-spouse wants to relocate with the child, but I know that the child does not want to go. Will the Court take the child's views into consideration?

Yes. This however depends on the age of the child. Section 125(2)(b) of the Women's Charter (Cap. 353) and section 11 of the Guardianship of Infants Act (Cap. 122) provide that the Court may take into account the wishes of the child in making its decisions. The caveat, however, is that the child should be of sufficient age to express his / her views independently. The views and wishes of a child that is older are likely to be given greater weight by the Court as opposed to that of a younger child.

The quality of the evidence before the Court is also material in this regard. For young children, it is very unlikely that the Court will accept a recording of the child stating his / her wishes, or an affidavit in which the child states his / her wishes. The party asking the Court to give weight to a young child's wishes should request that the Judge interview the child directly, or alternatively apply to appoint a Child Representative to independently ascertain the child's views.

At the end of the day, the child's views are but one factor that the Court considers in assessing whether relocation would be in the child's best interests. The child's wishes would not automatically be equated with the child's best interests.

7. I am the parent with care and control and I am very unhappy in Singapore. Will the Court take my views into consideration when I apply to relocate with the children out of Singapore?

Yes, but only to some extent. The main consideration remains what is in the child's best interests.

In ***BNS v BNT***, [2015] 3 SLR 973, the Court of Appeal held that "the relocating parent's reasonable wish to relocate is not relevant per se. It is relevant only to the extent that it is found that there will be a transference of his or her insecurity and negative feelings onto the child."

In a similar vein, in ***TAA v TAB***, [2015] 2 SLR 879, Ms Debbie Ong JC (as she then was), who is now the presiding Judge of the Family Justice Court, held that the "law expects parents to put the interests of the children before their own".

The Court will thus take into account the relocating parent's views, but only insofar that it has an impact on the children. One possible scenario was envisaged by Ong J in ***UXH v UXI***, [2019] SGHCF 24, where the learned Judge held that there may be a "category of cases where a trailing spouse has no significant connection to the forum country after the divorce, feels or is isolated, and wishes to return to his or her home country", in which "denying the parent's wish to relocate may so deeply affect such a parent's wellbeing that this in turn has negative effects on the

child". The Court applied this very holding in HCF/DCA 53/2019, which was noted in [34] of *UYJ v UYK*, [2020] SGHCF 9.

Thus if you are extremely unhappy in Singapore, you need to explain why, and show that it is having an impact on the children's well-being. You must however bear in mind that the Court's first and paramount consideration is the child's best interests – not the relocating parent's wishes and feelings.

8. *I am the parent with access, and my ex-spouse wants to take the child overseas. Will the Court consider my views and the relationship that I have with the child?*

Yes. The potential loss of relationship between the child and the parent that will be 'left behind' if the relocation takes place is an important factor that the Court considers in assessing whether relocation is in the child's best interests. This is because the Court is aware that it is in every child's best interests to have both parents physically present and involved in their lives. The stronger your relationship with the child and the more involved you are in the child's life, the more the child will feel the loss if he / she is relocated overseas. This will have an impact on the child's well-being which the Court will take into account.

Circumstances under which relocation can be granted

9. *Under what circumstances will the Court allow me to relocate with the child?*

The Court's first and paramount consideration in every relocation case is what is in the child's best interests. If this requirement is met, the Court will more likely grant the relocation than deny it. Because the test is a broad and general one, the Court has been very careful not to identify categories of cases in which relocation is more likely to be granted.

However, in our experience and research, there are generally three categories of cases in which relocation has been granted:

- a. When the applicant parent is being relocated overseas for work, or where the applicant parent has remarried and his / her new spouse is being relocated overseas for work,
- b. When the child needs to relocate overseas for his / her education, and
- c. When the parent seeking leave to relocate is a trailing spouse.

We have listed these categories as a guide, and highlight again that relocation will not be granted purely because a case falls within one of these categories. We explain below how relocation falling within each category have or have not been granted in past cases.

10. *I am being posted overseas for work. Will the Court grant me leave to relocate with the child?*

It depends. The question the Court has asked in such past similar cases is whether the overseas posting is necessary, or whether it was an option.

In *UOG v UOH*, [2018] SGFC 76, the Family Court allowed an application to relocate because the mother submitted that if she did not accept the overseas posting, she would be made redundant in her employment.

To the contrary, in *UXH v UXI*, [2019] SGFC 64, the Court declined an application for relocation because it noted, amongst other factors, that the mother in that case did not need to relocate, and had "the real option of staying put and thriving in Singapore". This decision was upheld on appeal.

The question is thus whether the overseas posting is a necessary one. If it is, there is a greater likelihood of the application for relocation being granted.

11. *I have found a new job overseas. Will the Court grant me leave to relocate with the child?*

It depends on whether it is necessary to have taken up employment in a role overseas.

In *TEU v TEV*, [2016] SGFC 33, the Family Court held that the parent seeking relocation must have exhausted all reasonable attempts to remain in Singapore, otherwise every application for relocation would simply quit his / her job and claim that he / she is unable to remain in Singapore.

In *UQV v UQW*, [2018] SGFC 114, the Family Court allowed an application to relocate. The applicant parent lost his job, could not find a replacement job in Singapore, but was able to secure a job in the UK.

It is thus important to establish the necessity of travelling overseas for work, for instance by reference to an inability to obtain a job in Singapore.

12. I have entered into a new relationship with a person that is being posted overseas for work. Will the Court grant me leave to relocate with the child to be with my new boyfriend/girlfriend?

The Court does take into account the fact that parties with new relationships should be allowed to move on from their past and pursue their happiness. However, there are competing considerations in such cases that pull in the opposite direction.

The first such consideration is that the Court expects parents to put the children's interests ahead of their own wishes.

The second such consideration is that a new relationship is not equal to a new *marriage*. There is no permanence, and no binding legal commitments, in a new relationship as opposed to a marriage.

The third such consideration is, as before, whether or not the relocation is *necessary*. This involves an analysis of (1) whether the overseas posting is necessary, and (2) whether it is necessary for the applicant to move overseas to join his / her romantic partner.

As a result of these considerations, such applications are rarely granted.

13. I want to relocate overseas, but my son is a Singapore citizen / permanent resident and needs to return to serve NS. Can I still relocate?

Yes you can, but you need to make plans to ensure that your son will be able to return to Singapore to fulfil his NS duties.

As a cautionary tale, you should not state hastily that you will renounce your son's PR status so that he will not need to return to fulfil his NS duties. The Court in *UXH v UXI*, [2019] SGFC 64, had harsh words for the applicant mother who did just that. If you intend to renounce your son's PR status, you must ensure that this is a decision that is properly considered with your ex-spouse's input as this is an important decision that affects your son's long-term status.

14. My spouse was posted to Singapore for work, and I moved with my spouse to Singapore to keep the family together. The marriage has broken down and I want to go home to my home country with the child. Will the Court let me?

It depends on the facts of your case. Your situation is one in which the Courts have previously granted relocation. The shorter the time that you and the child have been in Singapore before you first indicated your wish to return home, the stronger your case. If you do not have a visa for long-term stay in Singapore (e.g. if you are getting divorced and your Dependent's Pass is thus in jeopardy), your case will be stronger as well.

The contrary also applies. If you have been in Singapore for a long time and have permanence to your stay in Singapore (e.g. if you have obtained PR status), or if your child was born in Singapore, and has only known Singapore as their home all his / her life, the Court is likely to reject the application.

15. I think that an overseas education is better for my child than a Singapore education. Will the Court allow the child to relocate overseas for his studies?

Yes, but you need to show the Court the concrete benefits of studying overseas. It is not sufficient to show the Court that the child will do just as well overseas as in Singapore, or to submit on the basis of a worry that the child will not do well enough in Singapore.

In *UXH v UXI*, [2019] SGHCF 24, the Court noted that the discussion on the children's education was on the premise that the UK school was "at least no less suitable" for the children. This was insufficient to convince the Court that the relocation was in the children's best interests.

In *TLD v TLE*, [2016] SGFC 28, and *UGM v UGN*, [2017] SGFC 123, the Family Court in both cases dismissed the applications on the basis that the applicant parents in both cases were only speculating that their children would not do well enough in Singapore to pursue their intended courses of study.

In contrast, in *TCI v TCJ*, [2015] SGFC 58, the Court allowed an application to relocate because the child had learning disabilities and required daily therapy and special educational support. The costs of such therapy and educational support were prohibitive in Singapore, and the overseas school could provide such therapy and educational support at a much lower cost.

Thus to successfully relocate on the basis of educational needs, you will need to show the Court that there is a concrete and real benefit to the child to be educated overseas.

16. My ex-spouse wants to relocate with the child to a country where the Covid-19 pandemic is very poorly managed. Can I resist the application to relocate on that basis?

Such a defence is unlikely to succeed.

The Court in *UYJ v UYK*, [2020] SGHCF 9, upheld a lower court's decision to allow the mother's application to relocate the child despite the father's concerns about the pandemic, amongst other things. The mother, who was a trailing spouse, sought leave to relocate back to the UK where she and the child are citizens. The father who was appealing, objected on the basis that the UK was very hard-hit by the pandemic and the child's safety was in danger.

The Court held that the child's long-term interests would not change regardless of the status of the pandemic, which was viewed as a relatively short-term issue. The Court also declined to enter into an analysis of whether Singapore or UK was safer from the pandemic, and whether the Singapore or UK government was doing better. The Court said that the mother and child would be returning to the UK where, as citizens, they are entitled to the protection of the state.

Impending relocation without consent

17. My ex-spouse is saying that he / she is intending very shortly to relocate overseas with the child, without my consent. What can I do?

You need to take urgent action and it is best to consult a reputable family lawyer with expertise in such areas. You will need to file an application for an injunction to restrain your ex-spouse from taking the child out of the country. This application should be filed and determined on an ex parte basis urgently, and an order made as soon as possible and served on your ex-spouse, and on the Immigration and Customs Authority. It is important that your application also seeks a relief that your child's passport be held either by you or parties' lawyers as stakeholders. This serves as additional security to prevent the child from being brought out of the country.

18. My ex-spouse has left the country with the children, without my consent. What can I do?

It is not too late to apply for the child to be returned.

You will need to identify the country to which your ex-spouse has travelled, and consult with lawyers practicing in that country. You should ask them about (1) whether the country is a signatory to the Hague Convention on the Civil Aspects of International Child Abduction and recognizes Singapore as a signatory such that the Convention applies as between that country and Singapore, or (2) whether there are other mechanisms through which you can apply for the child to be returned to Singapore.

If your child has been brought to Singapore without your consent, an application for the child to be returned can be filed under either the International Child Abduction Act (Cap. 143C) (assuming that the Convention applies as between your home country and Singapore), or the Guardianship of Infants Act (Cap. 122) if the Convention does not apply.

Access for left-behind parent

19. My ex-spouse intends to relocate with the child out of Singapore. I am inclined to agree, but I am concerned about how I am going to spend time with the child. How much time can I expect to have?

On the assumption that you will not be travelling with the child and will be living in a different country from the child in the foreseeable future, you may expect to have more generous access as below.

Firstly, you will be likely to have rather liberal remote access. Remote access is access through remote means of communication – e.g. text messages, phone calls, video calls. Such remote access and the frequency thereof would depend on the ages of the children and their schedules. Generally for older children (teenagers), such remote access would be as and when you and the child wish and may be scheduled between parent and child. With younger children (e.g. under 10), phone and video calls may have to be scheduled ahead of time. If you are on good talking terms with your ex-spouse, such calls can be scheduled on an ad hoc basis. If you are not on good talking terms with your ex-spouse, it may be wise to have the calls take place at a fixed schedule each week and on special occasions.

Secondly, you will also be likely to have more of the children's school holidays than your ex-spouse. For instance, if the child has an 8-week summer break, you might expect to have up to 5 weeks of the summer break. If the child has week-long term breaks 3 times a year, you can expect to have 2 out of 3 of these term breaks.

Thirdly, if you are able to travel during term time, you can expect also to have access to the child once per month, for a period lasting two weekends (i.e. about 9 days).

Whether or not you travel to see the child, or the child travels to see you, depends on the circumstances. During term time, you will undoubtedly have to travel to see the child. During school holidays, however, it is possible for the child to travel to Singapore to be with you. You will likely have to travel to pick up the child from his new country of residence and bring him to Singapore, and then bring him back at the end of your time with him.

The above is also assuming that you are able to travel extensively or work remotely. If you are unable to take leave to travel extensively, or do not work remotely, then your access will likely be limited to (1) the amount of leave you can take, and (2) how often the child can come to Singapore to spend time with you. That said, you are likely to be given your choice of access dates (subject to reasonability and the child's school schedule) so that you can maximize your time with the child having regard to your leave entitlement.

20. My ex-spouse wants to relocate with the child to a country which I cannot enter (e.g. border closures due to pandemic, or pending criminal charges). Will the Court still allow the relocation even if I cannot physically see the child?

Unfortunately, the answer is yes. If the Court finds that it is in the child's best interests to be relocated to a certain country, the fact that you cannot physically be with the children is but a challenge which can be overcome.

If border closures are likely to be relatively short-term (e.g. due to the Covid-19 pandemic), the Court may just allow the relocation without more, in the hopes that access can resume once the situation returns to normal. This was the case in *UYJ v UYK*, [2020] SGHCF 9.

If there are more systemic reasons why you cannot travel to see the child, the Court will likely find creative ways to allow you to spend time with the child. In *TSE v TSE*, [2018] 2 SLR 833, after a very long fight over whether the child should stay in Singapore or the UK, the Court ordered that the child should stay in Singapore. The fact that the mother did not have the funds to travel to Singapore was ameliorated by the Court ordering the father to pay for two trips per year for the mother to travel to Singapore to spend time with the child.

21. Can I expect my spouse to pay for me (or contribute to my expenses) to travel to see the child, after the relocation has taken place?

In cases where one party does not have the financial means to travel regularly to see the child, the Court has ordered that the relocating parent contribute to the costs of the left-behind parent's overseas trips to see the child. In ***TSF v TSE***, [2018] 2 SLR 833, the Court ordered that the father pay for two trips a year, for the mother to travel to Singapore to see the child.

The Court does not however make such orders regularly. You need to satisfy the Court that you will indeed be placed in financial hardship and thus require such orders.

Conclusion

In conclusion, as with all matters concerning children, the only paramount consideration is what is in the child's best interests. Whether the Court allows relocation would depend on the individual facts of each case and the Court's assessment on a balance of the various factors if relocation is in the child's best interests.

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