

Immigration Status in Custody Cases Reference

Ramirez v. Ramirez, 2007 WL 1192587 (Ky. Ct. App. 2007)

- Father's likely status as undocumented was properly among the factors considered and was related to his ability to serve as custodian for the children, in part because of the danger of deportation

Collins v. Santiago, 2007 WL 3037762 (Ky. Ct. App. 2007)

- An undocumented parent is able to file a custody action, and the court has jurisdiction to hear his application
- it is not the role of the court to address the father's immigration status, except in his capacity to care and provide for his children
- in this case no evidence has been offered to show that his status renders him incapable of these duties

In re Duenas, 725 N.W.2d 658 (Iowa Ct. App. 2006)

- Although the trial court indicated the mother's undocumented status "complicates the custody issue," her immigration status was only one factor among many in the court's determination of the child's best interests

Rico v. Rodriguez, 121 Nev. 695, 120 P.3d 812 (2005)

- Since the child's best interests are paramount in custody matters, a court has the discretion to consider a parent's immigration status and its derivative effects as a factor in determining custody

Ish-Shalom v. Wittmann, 797 N.Y.S.2d 111, 112 (2d Dept. 2005)

- App court shared the family court's concern that the immigration status in this country of the mother, a German national who entered this country on a visitor's visa, "is questionable at best"
- If the mother were to return to Germany with the children, the father, as noncustodial parent, could not petition under the terms of the Hague
- Under these circumstances father should have been awarded jt. custody with the mother

Olupo v. Olupo, 2002 WL 1902892 (Minn. Ct. App. 2002)

- Court made detailed findings supporting the strong probability of the mother's flight with the children, such as her ability to falsify documents, failure to relinquish her passport to the court, frequent moves with the children without notifying the father of their location, unclear immigration status and problematic eligibility for political asylum, and lack of ties to MN other than her children
- in ordering supervised visitation, the court properly considered the mother's propensity to flee with the children and the fact that her home country, Nigeria, was not a signatory to the Hague Abduction Convention

In re Dependency of J.B.S., 123 Wash. 2d 1, 863 P.2d 1344 (1993)

- Although not dispositive, the trial court has discretion to consider a parent's immigration status insofar as it may affect the consequences of the placement decision
- But - See In re M.M., 263 Ga. App. 353, 587 S.E.2d 825, 832 (2003) – reversing termination of father's parental rights which was essentially based on the possibility that the F could someday be deported.

Articles arguing that immigration status should not be considered in determining child's best interests

- Weber, (Unfair) Advantage: Damocles' Sword and the Coercive Use of Immigration Status in a Civil Society, 94 Marq. L. Rev. 613 (2010)
- McFarland and Spangler, A Parent's Undocumented Immigration Status Should Not Be Considered Under the Best Interest of the Child Standard, 35 Wm. Mitchell L. Rev. 247(2008).

Abrams, Immigration Status and the Best Interests of the Child Standard

- 14 Va. J. Soc. Pol'y & L. 87, 88-89 (2006)
 - An article arguing that "in most cases the immigration status of a parent is likely to be an irrelevant factor in determining the best interests of the child; if anything, it will serve the dangerous function of as acting as a repository for the unconscious biases and punitive impulses of judges against immigrant parent"

Thronson, Custody and Contradictions: Exploring Immigration Law As Federal Family Law in the Context of Child Custody

- 59 Hastings L.J. 45 (2008)
 - Cautioning that consideration of immigration status per se is discriminatory and irrelevant to the best interests of the child but suggesting parameters for the cautious evaluation of immigration related matters on a case-by-case basis

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