

When Relocation Becomes Abduction: Cross-Border Moves, Hague Remedies, and Jurisdictional Tensions Between England and New York

By: Valentina Shaknes and Kim Lehal | July 27, 2026

1. The Legal Tests Compared

New York: Tropea and the Best Interests Inquiry

New York's relocation law is governed by *Matter of Tropea v. Tropea*, 87 N.Y.2d 727 (1996), which rejected a rigid threshold test in favor of a totality-of-the-circumstances inquiry. The sole question is whether the proposed relocation serves the best interests of the child; the greater the distance, the heavier the burden on the relocating parent. Relevant factors include the reasons for the move, the impact on the non-relocating parent's relationship with the child, whether a workable parenting schedule can be fashioned, the child's ties to their community and school, and the economic and emotional benefits of relocation. Case law illustrates the approach: in *Lecaros v. Lecaros*, 127 A.D.3d 1037 (2d Dep't 2015), the Appellate Division Second Department affirmed permission to relocate to London, finding the move to be economically necessary and a liberal parenting schedule could effectively preserve the child's relationship with the non-relocating parent. In *Mathieu v. Michels*, 180 A.D.3d 403 (1st Dep't 2020), the First Department held that a father who had encouraged a London move when it suited his career could not credibly oppose it when it suited the mother's. Most recently, the First Department affirmed permission to relocate to Madagascar,

notably a non-Hague signatory, where the relocation was necessary for the mother's job at the United Nations and the impact on the children's relationship with the father was minimal, given that the father had been largely absent from the children's lives for several years. *Marie D. v. Frantz T.*, 2026 WL 847234 (1st Dep't 2026).

England: Welfare Paramountcy and the Holistic Analysis

English relocation applications, formally applications for "leave to remove" under section 13 of the Children Act 1989, are determined by the welfare paramountcy principle in section 1 CA 1989, interpreted through the seven-factor welfare checklist. The Court of Appeal's trilogy of *K. v. K.* [2011] 1 FLR 1052, *Re F* [2013] 1 FLR 645, and *Re. F.* [2015] EWCA Civ 882 established that the court must conduct a "global, holistic analysis" of all realistic outcomes considered side by side. Failure to do so is a reversible error: in *WS v. KL* [2020] EWHC 2448, a relocation order was set aside where the judge had not genuinely compared the realistic options or adequately addressed the father and children's Article 8 ECHR rights.

Key Differences

Both systems are child-centered and weigh broadly analogous factors. The differences are structural.

English courts apply a more prescribed methodology and explicitly integrate ECHR proportionality within the welfare review—a point settled by the Court of Appeal in *Re O* [2025] EWCA Civ 888. English appellate courts are also quicker to reverse decisions where the required structure is not demonstrably followed. A proposal satisfying a New York court under *Tropea* may fail in England not because the substantive outcome differs but because the analytical framework was insufficiently rigorous.

2. When “Temporary” Becomes Permanent

One of the most common sources of preventable harm in international family cases is the temporary relocation that never ends. Practitioners in both jurisdictions should insist on the same core protections whenever consenting to any temporary international relocation: an exact return date or clearly defined triggering event (open-ended language such as “approximately one year” is an invitation to future litigation); express preservation of New York as the home state under the UCCJEA and as the state of habitual residence for purposes of the Hague Convention; and explicit enforcement language making non-return a contempt violation and a potential change of circumstances justifying modification of custody. For non-Hague destinations, mirror orders from the destination jurisdiction, a security bond sized to cover return travel and legal costs, and pre-purchased return tickets (with a date certain) should also be required. School enrollment and integration into the culture of the new country deserve particular attention, as such long-term enrollment and integration are likely to create ties the relocating parent may later invoke to resist return.

3. Unauthorized Removal: Hague and Non-Hague Remedies.

The Hague Framework

The 1980 Hague Convention on the Civil Aspects of International Child Abduction (the “Hague Convention”) provides a treaty mechanism for the prompt return of wrongfully removed or retained children to their country of habitual residence. Its application is purely jurisdictional and courts considering applications under the Hague Convention are expressly prohibited from making custody determinations. In the United States, the Hague Convention is implemented through the International Child Abduction Remedies Act (“ICARA”), 22 U.S.C. § 9001 et seq., with state and federal courts holding concurrent jurisdiction. In the United Kingdom, it is implemented through the Child Abduction and Custody Act 1985, with incoming cases litigated in the High Court (Family Division). Consistently with the mandate of the Hague Convention, both jurisdictions require a “prompt” resolution. The available defenses, namely consent or acquiescence (Article 13(a)), grave risk of harm (Article 13(b)), mature child’s objection, and the well-settled defense (Article 12), are identical in text but applied with different procedural and evidentiary approaches.

A significant practical divergence concerns access to legal aid. In the United Kingdom, left-behind parents in incoming cases receive automatic, non-means-tested legal aid. In the United States, the Office of Children’s Issues within the Department of State, which serves as the U.S. Central Authority for international child abductions into the U.S., assists left-behind parents with locating counsel, including *pro bono*. There is no similar access to legal services for the taking parents. Moreover, ICARA includes a fee-shifting provision under Section 9007, permitting costs to be awarded against the taking parent in a successful application, which creates additional advantages for the left-behind parents able to front the cost (or can find counsel willing to do so).

Non-Hague Countries

China, India and the UAE (as well as Russia in proceedings involving the United States and Pakistan in those involving the United Kingdom) are among the most notable countries who have not signed on to the Hague Convention. When a child is removed to one of these countries, the left-behind parent has no treaty-based return mechanism, which makes return extremely challenging, if not outright impossible. As a result, courts in both jurisdictions apply heightened scrutiny to relocation applications directed at these destinations. When the relocation is permitted, mirror orders, bonds, passport surrender, and advance notice requirements are almost certain to be required.

Once removal has already occurred, speed is critical. Emergency custody orders in the child's state of habitual residence should be obtained immediately and the Office of Children's Issues (in the U.S.) or FCDO (in England) should be contacted at once. Local counsel should be engaged in the destination country without delay. The English principles in *Re J (A Child) (Custody Rights: Jurisdiction)* [2006] 1 AC 80 govern non-Convention summary return applications: welfare is paramount, a prompt return may be ordered without full merits investigation, but it should never be automatic.

4. Domestic Violence: 'Re O' and The Evolving Applicable Framework

Both jurisdictions treat domestic violence as among the most powerful justifications for relocation. In New York, a parent's need to escape abuse is understood to be a compelling, child-centered purpose. The law is catching up to the science in its understanding that children's exposure to domestic violence is harmful to children and causes a myriad of long-term effects.

The courts are likewise alert to the use of relocation litigation itself as a tool of coercive control. There is also a growing recognition that evidence of domestic violence is rarely available, not the least because abuse occurs in the privacy of the home and because victims are often reluctant to seek help. Expert testimony, including testimony on coercive control dynamics, is becoming increasingly popular to explain the pattern of abuse and why survivors may not have reported abuse or may have recanted—facts which historically were used to undermine credibility.

In England, the most significant recent development is the English Court of Appeal's decision in *Re O (Domestic Abuse: International Relocation)* [2025] EWCA Civ 888. Where findings of serious physical abuse and coercive control had been made, Cobb L.J. held that Practice Direction 12J – Child Arrangements and Contact Orders: Domestic Abuse and Harm must be applied in relocation proceedings just as in domestic private law cases. He identified additional considerations specific to the welfare analysis in relocation cases involving abuse: whether the abuse is ongoing and how victims can be protected in each jurisdiction; what support will be available in the destination country; and whether contact with the perpetrator can be managed safely post-relocation. The court also confirmed that ECHR Article 8 proportionality must be integrated into the welfare review, not treated as a separate crosscheck, though judges are well-advised to acknowledge that exercise explicitly to foreclose appeal.

"If domestic abuse is proved, the court will consider its orders in an international relocation case in just the same way as it would in a domestic private law case, namely to protect the safety and wellbeing of the child and the parent with whom the child is living." — Cobb L.J., *Re O*, §93

5. The Asylum Intersection

This scenario is increasingly common: a parent arrives in England or the United States with a child, files an asylum application citing domestic violence or persecution, and the left-behind parent commences Hague proceedings. In this situation, the two jurisdictions respond very differently. In England, *Re G (A Child)* [2021] UKSC 9 established that a pending asylum claim by or on behalf of a child is an absolute bar to the *implementation* (though not the making) of a return order, for so long as the claim—including any in-country appeal—remains pending. The Supreme Court acknowledged this could have a “devastating impact” on the Hague system and has called on the Parliament for a legislative solution.

In the United States, by contrast, Hague proceedings and asylum proceedings run on parallel but independent tracks, and a pending asylum application does not stay the Hague case. A grant of asylum is strong evidence for an Article 13(b) defense in subsequent proceedings, but no formal bar on implementation exists pending adjudication. Counsel for the taking parent in a U.S. Hague case should file the asylum application promptly, seek expedited adjudication, and present all relevant immigration evidence in full within the Hague proceeding itself, rather than relying on the asylum track as a delaying mechanism.

6. Conclusions

Five practical lessons emerge from this analysis. First, the legal tests in the two jurisdictions are

more similar than they first appear, but the methodology differs significantly. English courts require a far more structured analysis, and U.K. applications must be calibrated accordingly. Second, temporary relocations demand the same rigor as permanent ones: precise return dates, preserved jurisdiction, mirror orders, and explicit enforcement language are not optional. Third, domestic violence changes the calculus in both jurisdictions: document abuse comprehensively, engage coercive control expertise, and in England deploy the *Re O* framework from the outset. Fourth, non-Hague destinations require a fundamentally different approach—a parent who consents to relocation to a non-Hague country without iron-clad protective provisions could, in practical terms, be consenting to a permanent relocation with no guarantee of ever seeing their child again. Fifth, where asylum proceedings are involved, early and carefully coordinated engagement with both legal regimes is critical; to treat them as wholly distinct is to risk serious prejudice to the client’s position.

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The views expressed herein are solely those of the authors. The authors of this essay and their respective law firms represented petitioner at different times in the litigation.