



Neutral Citation Number: [2024] EWHC 189 (Fam)

Case No: FD23P00373

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 1/02/2024

**Before :**

**MRS JUSTICE THEIS DBE**

**Between :**

	<b>Father</b>	<b><u>Applicant</u></b>
	<b>- and -</b>	
	<b>Mother</b>	<b><u>1<sup>st</sup> Respondent</u></b>
	<b>- and -</b>	
	<b>W, X, Y and Z</b> <b>(Through their Childrens Guardian, Kay Demery)</b>	<b><u>2<sup>nd</sup> – 5<sup>th</sup></u></b> <b><u>Respondents</u></b>

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**Mr Ralph Marham** (instructed by **Covent Garden Family Law**) for the **Applicant**  
**Ms Pauline Lewis** (instructed by **Malik Legal Solutions.**) for the **1<sup>st</sup> Respondent**  
**Mr Jamie Niven-Phillips** (instructed by **Cafcass**) for the **2<sup>nd</sup>-5<sup>th</sup> Respondents**

Hearing date: 25<sup>th</sup> January 2024

Judgment: 1<sup>st</sup> February 2024

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**Approved Judgment**

This judgment was handed down remotely at 10.30am on 1<sup>st</sup> February 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**MRS JUSTICE THEIS DBE**

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

**Mrs Justice Theis DBE :**

**Introduction**

1. This matter concerns the father's application for the return of four children W, 11 years, X 9 years, Y 7 years and Z 6 years to the US pursuant to the Hague Child Abduction Convention 1980, following their wrongful removal from the US in about July 2019.
2. All four children live with their mother here, together with their younger sister, V 4 years, who was born following the mother and children arriving here in September 2019. The mother objects to the father's application. In October 2019 the mother made an asylum application on behalf of herself and the children. That application was refused in August 2023, the mother has appealed that decision. No date for hearing of that appeal has been fixed.
3. The children are parties to these proceedings through their Children's Guardian, Ms Demery.
4. The mother defends the proceedings on the grounds that (i) the children's habitual residence is here at the time of this hearing (raised for the first time at this hearing); (ii) the children are settled here; (iii) child's objections; (iv) Article 13 b) grave risk of harm.
5. The Children's Guardian supports the settlement defence and, if established, invites the court to exercise its discretion not to order a return.
6. In addition to the court bundle, the written and oral submissions from all the parties, the court heard oral evidence from Ms Demery.

**Relevant background**

7. The father, 32 years, was born in Kenya and the mother, 30 years, in Somaliland. The mother later moved with her family to Kenya.
8. In 2007 the father moved with his family as refugees from Kenya to the US.
9. According to the father, the mother and father married in the US in September 2009. The mother states she was still in Kenya at that time and it was after she travelled to the US as a student that the father '*registered our marriage*'. The mother alleges the father had been accused of a sexual assault and had served a term of imprisonment prior to their marriage, which he denies. The mother makes allegations of physical, drug abuse and sexual assault against the father during the marriage, including being required by him to give up their elder daughter, K, to be adopted by the father's sister who was unable to have children of her own. The mother also alleges the father undertook further marriages and is married to '*three wives*'. The father denies these allegations and produced evidence of the negative drug testing he has undergone as part of his employment.
10. W was born in 2012, X in 2015, Y in 2016 and Z in 2017.
11. According to the mother the parties separated in 2017 although she alleges the father still continued to abuse her. The father accepts they separated but only for a short period before reconciling, and he produces a number of photos taken in 2019 of the parties together to support what he says.

12. In 2019 the mother obtained US citizenship.
13. In July/August 2019 the father alleges the mother wrongfully removed the children from the US. In his statement he considers it was due to pressure from her family. The mother states it was due to the alleged abuse she suffered from the father. She states she travelled to Kenya on 29 July 2019 to see her family with the children and travelled with the father's sister. According to the mother the father dropped her and the children at the airport, she had contact with him following her arrival in Kenya when she requested financial help to assist with medical treatment she was receiving in Kenya. The father denies any knowledge of this trip.
14. The mother accepts she went from Kenya to the UK in September 2019 without the father's consent or knowledge, although states the father and his family were aware of where she and the children were. Including being contacted by the father's sister when one of the children had injured himself.
15. The mother applied for asylum in the UK for herself and the children on 29 October 2019.
16. V was born in 2020 in the UK.
17. The father maintains he did not know where the mother and children had gone, initially he thought they had travelled to either Kenya or Tanzania. In his more recent statement he accepts his sister informed him when she returned to the US in November 2019. The father states he subsequently discovered through a member of the mother's family they were in the UK, but gives no date when he learned that information. According to Ms Demery's report, the mother complained to the police here in October 2020 that the father had accessed her email account.
18. On 14 December 2020 the father issued his first application with the US Central Authority seeking the children's return from the UK. According to the father due to a misunderstanding at the time he thought he needed to provide proof of custody rights, which he had to get from a court to accompany his application.
19. In 2021 the father instructed a lawyer in Denver to assist him with the children's return. He was advised to apply for legal separation as a first step, which he did. The decree of judicial separation produced by the father is dated 5 August 2021, which states the parties separated in 2017. The father states he also sought assistance through the lawyer to secure his children's return, including putting them in touch with the Central Authority and produces an email dated 6 December 2021 from the Central Authority to the father offering to discuss the position.
20. In about December 2021 the mother moved accommodation with the children and they started attending school.
21. There is then a gap until the father sought further legal advice in early 2023 and was told to contact the US Central Authority. The father explains that he was not able to afford legal advice and had only limited education. The father did contact the Central Authority again in 2023 and was allocated a new case worker, which resulted in the application being made in this court in July 2023. The father states in his statement *'My education was limited in Kenya and I am a refugee having come to the US when I was 14 years old. I do not know the procedures and protocols that need to be followed, I really have tried over the last 4 years, to access the correct support and help to go down*

*the correct channels but it really has taken me a very long time finally to get the right help and assistance’.*

22. In his statement in support of this application, approved on 19 July 2023, the father provides the mother’s cousins address where he thinks the mother and children may be staying. He also suggests the mother may have re-married and entered the country under a false name.
23. On 20 July 2023 without notice disclosure orders, location order and port alert were made.
24. Further without notice disclosure orders were made on 26 July 2023. The mother’s address was subsequently confirmed by the NHS and she was served with the location order and the mother and children’s passports were secured. The mother was served with the court papers on 3 August 2023.
25. On 11 August 2023 the mother’s asylum application was refused and she lodged the notice of appeal against the refusal on 31 August 2023.
26. On 29 August 2023 the first effective on notice hearing took place, the children were joined as parties and directions made leading to a pre-trial review hearing on 31 October 2023 and a two day final hearing on 16 and 17 November 2023. The directions included notice being given to the Secretary of State for the Home Department (who responded stating they did not seek to intervene) and directing a report from Ms Demery to consider the defence of settlement.
27. On 12 October 2023 Ms Demery saw the mother and the children at their home and had telephone conversations with the father on 5 September 2023 and 18 October 2023.
28. At the hearing on 31 October 2023 further directions were made.
29. The two day hearing on 16 and 17 November 2023 was vacated by the court and re-listed for this hearing on 24 and 25 January 2024.
30. In December 2023 the father sent an email and photo to be read and shown by Ms Demery to the children by WhatsApp.

### **The evidence**

31. The father has filed three statements and the mother two statements setting out their account of the background.
32. Ms Demery filed her report on 20 October 2023. In her report she concluded the children were settled in the UK and considered W did object to returning to the US, she considered his age and maturity was below his chronological age.
33. In oral evidence Ms Demery expanded on her conclusions. She recognised the difficulties in maintaining contact between the father and the children if they remained living here and, at present, the children have no right to remain living here. In her view, from the children’s perspective, they were not aware of them having no right to live here. She considered it would be very disruptive for the children to return to the US as they would experience further disruption, including to their education and would need to adjust to a different education system. Her view is the children regard the UK as their

home, this is the '*centre of their life*', they have friends and some relatives here, and take part in local activities (such as W's football club). Whilst she acknowledged the difference between a return overseen by this court, when compared to deportation, she said she hoped the father would offer the same protective measures in the event of the latter and there is no certainty about the outcome of the asylum appeal.

34. As regards contact with the father Ms Demery accepted that the children had become more aligned with their mother's views and was struck by the comments made by W in his responses to the content of the father's letter. Bearing in mind the importance of the wider family she thought the father's sister may be able to assist, or be a conduit to promote contact going forward. Whilst she saw the force of the suggestion that contact may be easier if the children returned to the US, she said that was in part dependent on where in the US the children returned to.
35. In relation to the safeguarding concerns set out at the start of her report, Ms Demery said the school attendance suggests the mother hadn't appreciated the importance of the children needing to attend school. However, she noted when she went with the mother to collect the children from school they appeared relaxed and well-integrated in the school. The delay in registering the children with a GP needs to be considered in the context that the mother told her they had travelled back to their previous GP in Ilford.

### **Legal framework**

36. In relation to the defences there is broad agreement about the relevant framework.
37. The following articles of the Convention are relevant to this case.

Article 1 includes among the objects of the Convention:

"to secure the prompt return of children wrongfully removed to or retained in any Contracting State ...."

Article 3 provides, so far as relevant:

"The removal or the retention of a child is to be considered wrongful where

"a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention;  
...."

Article 4 provides:

"The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights."

Article 12 provides:

"Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative

authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment."

Article 13, so far as relevant, provides:

"Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that...

b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views..."

38. This case is being considered in the context of the principles set out in *G v G (Secretary of State for the Home Department and others intervening)* [2021] UKSC 9. The court can determine a 1980 Hague Convention application prior to the determination of an asylum claim, although the implementation of any summary return order, if made, is prevented prior to the determination of the asylum claim, which includes the conclusion of any appeal.
39. Although not put in issue in any earlier hearing on behalf of the mother, Ms Lewis raised the issue of habitual residence in her skeleton argument for this hearing. The relevant time for habitual residence is the time of the unlawful removal or retention (see *Re X (Child Abduction: Habitual Residence)* [2022] EWCA Civ 1423).
40. Turning to the defences raised, taking each in turn.
41. Settlement comprises core elements; physical settlement, emotional settlement and psychological settlement (per MacDonald J in *Re B* [2015] EWHC 2047 (Fam)). The physical element relates to being established in a community or environment and the emotional/psychological element denotes security and stability. In *re C (Child Abduction: Settlement)* [2006] 2 FLR 797 Sir Mark Potter stated '*It must be shown that the present situation imports stability when looking into the future*'.
42. Article 13 (b) requires the court to consider whether the evidence establishes that if the child is returned '*there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation*'. The burden of proof is on the person opposing the return, the risk must be grave, the harm is physical or emotional or a situation which the particular child in the particular circumstances should not be expected to tolerate. The focus of the court should be on the situation if the child was returned, the future risk, and that will require the court to evaluate the protective measures that are proposed should be in place. The court can consider the anxieties of the respondent if they are such that they would impact their

parenting to the extent that the child's situation would become intolerable (see *MB v TB Art 13: Alleged Risk of Oppressive Litigation*) [2019] EWHC 1019 (Fam)).

43. In *Re C (Children) (Abduction: Article 13 b)*) [2018] EWCA Civ 2834 at [39] Moylan LJ made clear that it is not the case that the court has to accept allegations made without, where appropriate, conducting an assessment of the credibility or substance of the allegations. Although he noted the need to be '*careful when conducting a paper evaluation*' due the summary nature of the proceedings.
44. Turning to the defence of child objection there are three limbs to this defence: (i) the child objects to being returned; (ii) the child has attained the age and degree of maturity at which it is appropriate to take account of his or her views; (iii) the court has a discretion whether or not to order a summary return. Black LJ in *Re M (Republic of Ireland)(Child's Objections)(Joinder of Children as Parties to Appeal)* [2015] EWCA Civ 26 at [34] onwards sets out the approach to be taken when this defence is raised.
45. In the event that any of these defences are established the court must consider whether to exercise its discretion whether to order a return having regard to the principles set out in *Re M (Abduction: Zimbabwe)* [2008] 1 AC 1288 having regard to matters including the underlying policy considerations of the 1980 Hague Convention.

## **Submissions**

46. Mr Marnham's response to the issue of habitual residence raised by Ms Lewis at this hearing is the relevant time, according to the father, is July/August 2019 when he alleges the children were wrongfully removed from the US. On her own case, the mother accepts she wrongfully removed the children to the UK in September 2019. On either of those dates, he submits the children were clearly habitually resident in the US. The parties had lived there for many years, all the children were born and brought up there prior to their removal and their family life was based there.
47. Ms Lewis accepts the children were habitually resident in the US in 2019 but submits the court should consider the position regarding habitual residence now. She relied on the case of *Re X (ibid)* although was unable to take the court to any particular part of the case that supported her submission.
48. As regards the defences raised Ms Lewis submits the evidence supports the children being settled here. She relies on the information contained in the mother's statements supported by Ms Demery's report and her analysis. Ms Lewis' submissions are supported by Mr Niven-Phillips, on behalf of the Children's Guardian, who submits the evidence established the children are physically settled here through their attendance at school, having a home here and there is no suggestion they were concealed from any services. He recognises the fact that the asylum claim was refused, the children have no legal status here, means they are at risk of deportation, depending on the outcome of any appeal, but it is not certain. He submits the court should be cautious in anticipating any outcome. He submits the issue of settlement needs to be considered from the child's perspective, based on their own understanding. There is no evidence they fear deportation, the picture painted by Ms Demery is of children settled and engaged in their environment in every sense. Mr Niven-Phillips weighed in the balance the impact of the loss of relationship between the father and the children and the need to take steps for the reintroduction of the father to the children, however that is a reality for the

children if they were to return to the US or remain here and only one aspect of the balancing exercise the court is required to undertake.

49. Ms Lewis submits the Article 13b) defence is established due to the serious nature of the allegations made by the mother, the need for the court to take them at their highest and the conclusion of the Home Office that the mother had been consistent in the matters she relies upon in support of her asylum application relating to financial abuse, allegations of being trafficked and her genuine fear about returning to the US. She submits if her allegations are taken as a whole, and considered in the context of the protective measures now offered as being in place or available, she submits that undermines their effectiveness in this case as they did not protect the mother previously.
50. Turning to the child's objections Ms Lewis relies on what Ms Demery sets out about what W told her, his reasons for not wanting to return to the US and her assessment as to his level of understanding. In her oral submissions she suggested that the three younger children should also be taken as objecting to a return to the US, although was not able to point to any evidence to support that submission and it appeared to be on the basis that the children should not be separated.
51. Mr Marnham takes issue with all the defences raised. He accepts there has been some delay in making this application and relies on the explanation for that delay in the father's statement and the difficulties he experienced in navigating what needed to be done. In relation to settlement he submits the evidence of Ms Demery needs to be balanced with a number of matters. First, the evidence that the general situation of the children has been unsettled in terms of a stable home, involvement with child protection services and the concerns raised about poor school attendance. In addition, the court needs to weigh in the balance the impact of the asylum application and the loss of the relationship between the children and their father. He submits the current position is the children have no right to remain here and are at risk of deportation, which is likely to be a less managed return to the US than under any order overseen by this court. Such a situation does not amount to stability for the children when looking to the future, it is an uncertainty the court should not ignore. The lack of an ongoing relationship with their father results in the children being more isolated here and the mother cannot be relied upon to support that relationship being re-established. The children's resistance to contact with their father is demonstrated by Ms Demery and that situation is likely to remain if the children remain here, rather than return to the US, even to a different State. He accepts there is some cross over between these matters in responding to the settlement defence and, if established, the discretion the court has to consider as to whether to order a return.
52. Mr Marnham does not accept that the threshold of the Article 13b) defence is established in this case. There is an inconsistency between the allegations made in this application and those alleged within the asylum application and there is no corroborative evidence to support what the mother alleges. The father has produced photographs of the mother and father at the time of the allegations which undermine what the mother alleges both in terms of his behaviour and involvement with the children. In addition he has produced negative drug test results that cover a number of years, undermining the mother's allegations about the father's drug abuse. In any event, he submits even if the threshold is met the comprehensive package of protective measures offered by the father will ensure that any risk of grave harm or an intolerable situation for the children will be ameliorated. Mr Marnham's submissions, in relation



to the protective measures, are supported by Mr Niven-Phillips on behalf of the children.

53. In relation to child's objections Mr Marnham submits this only applies to W and does not meet the required threshold. W's objections as expressed to Ms Demery really focus on remaining here and do not, he submits, amount to an objection to return to the US and Ms Demery considers W's age and understanding is less than his chronological age.
54. Mr Niven Phillips submits the court can '*just*' be satisfied this requirement is met in relation to both what W says and regarding his level of maturity and understanding. He submits, however, the court should exercise its discretion and not order a return.
55. In relation to the exercise of the discretion, on the basis that the court reaches that stage, Ms Lewis submits the court should exercise it to refuse to order a return on the basis that the children's welfare requires that due to the disruption to their lives such an order would involve. That is supported by Mr Niven-Phillips. Mr Marnhan disagrees and submits that the policy considerations that underpin the 1980 Hague Convention, the impact of the loss of the relationship between the children and their father and the inherent risks in the lack of any right of the children to remain living here all point towards the father's application being granted.

### **Discussion and decision**

56. The issue about habitual residence was raised for the first time on behalf of the mother at this hearing. There is no dispute between the parties that the children were wrongfully removed from the US in 2019, the father says in July/August 2019 and the mother accepts in September 2019. Even taking the latter date as the date of the wrongful removal, Ms Lewis accepts that the children's habitual residence was in the US at that time. In the light of that and the requirement for habitual residence to be considered at the date of the wrongful removal or retention (see *Re X* *ibid*) it is difficult to see on what basis this remains a live issue in this case and I reject Ms Lewis' submissions that habitual residence should be considered at any later time than September 2019.
57. Turning to the issue of settlement I am satisfied that defence is established for the following reasons:
  - (i) The children have been here for over four years. Whilst there was some instability about their living circumstances in the first two years, with some limited involvement of the police and children's services, the evidence demonstrates more stability in their lives since December 2021. This is evidenced by the children's attendance and integration at school, involvement in community activities (such as W's football club) and no involvement of children's services. The picture painted by Ms Demery when she visited the family and went with the mother to collect the children from school was of children who were integrated and content within their home and school environment. This not only related to their physical environment but also their emotional and psychological environment as well. As she observed '*this is the centre of their life*'. I accept Mr Niven-Phillips submission that to impose a summary return on these children would compound the harm to them by uprooting them from their now familiar environment.

- (ii) None of the children wish to return to the US. Whilst it is correct I have not found that W's wishes met the required standard the younger children in particular would be returning to a jurisdiction they have no memory of.
  - (iii) It is right the children have had no contact with their father since 2019 and were resistant to the attempts made by Ms Demery in December 2023 to read the father's letter to the children or show a photograph of him to them. That needs to be weighed in the balance when considering the other factors that point towards settlement but is a reality for these children whether they remain here or return to the US. If they return they may be physically closer to the father in the US but the reality of the gap in contact from the children's perspective remains the same.
  - (iv) I reject Mr Marnham's submission that the lack of a right to remain here and the implications of the children being deported results in the children not being able to be regarded as settled here. Whilst it is a relevant factor it is by no means certain what the outcome of any appeal will be and so whilst recognising the risk is there it is only one of the factors that need to be weighed in the balance and there is no evidence that issue is impacting on the children.
  - (v) Considering the wide canvas of evidence available I am satisfied the children are settled here. I accept the compelling written and oral evidence of Ms Demery which conveys from the children's perspective their physical, emotional and psychological settlement here.
58. In the light of my conclusion in relation to settlement it is not necessary for the court to determine the other two defences although it may be helpful for the court to set out in summary its conclusions if it was necessary to determine those issues.
59. In relation to the Article 13b) defence I am not satisfied that is established. I accept the threshold is met as the allegations made by the mother of physical and emotional abuse are extremely serious and would inevitably have a serious impact on her ability to care for the children expose them to the grave risk of harm or place them in an intolerable situation, although it is of note some of these allegations are not included within her asylum claim, without any explanation as to why that is so. The mother's account of the parents separating in 2017 is supported by the father's decree of judicial separation, which undermines his account that they separated and then reconciled and the photographs relied upon by the father do not undermine the account given by the mother. She accepts they remained in contact, albeit she alleges she continued to be abused and controlled by the father. I have also factored in the series of negative drug test produced by the father required for his job that undermine the mother's allegations about drug abuse. The risks of harm then need to be considered in the light of the protective measures put forward by the father. They can be summarised as follows: (i) to pay the mother and children's return travel costs; (ii) to support the mother and children to return to accommodation separate from the father for 3 months or until the first inter parties court hearing in the US, the father estimates this would cost about \$2,500 pm, or the mother could return to stay with her own wider family in the US; (iii) the father is confident the children could return to their old school; (iv) the father offers financial support of about \$300 pm for a period of three months; (v) not to attend at the airport upon return; (vi) not to separate the children from the mother's care without the mother's prior agreement or order of the US court; and (vii) not to institute any criminal proceedings against the mother arising from her wrongful removal of the children. The mother has not taken issue with any of these protective measures or sought any further

measures, save to respond more generally that protective measures would not be sufficient to protect her or the children from the relevant risks. Mr Marnham and Mr Niven-Phillips rely on the measures proposed and on the wider information the court has about the available protective measures available in the US from the asylum proceedings and for the documents filed in these proceedings to be disclosed to the relevant agencies and the court in the US. I accept those submissions. Ms Lewis submits the mother suffered the harm alleged when those protective measures were available however there is no evidence of the mother seeking help from the police or any child protection service which would be available on her return. This coupled with the arrangements and financial support offered by the father which would enable the mother and children to live independently with the relevant agencies being informed would, in my judgment, result in the Article 13 b) defence not being established.

60. As regards child objections I consider, on balance, in relation to W that defence is not established in this case. W's focus is on a wish to remain here rather than being able to articulate any reasons that amount to an objection to return to the US save for that which relates to the father and his lack of memory of the US. At its highest W says he can't remember much about the US, which is not surprising bearing in mind the amount of time he has spent here and his age when he left the US. There is also some evidence that supports W's views being influenced by his mother's views. Whilst this is not surprising, it undermines the weight the court can attach to W's views being his own. This is particularly so when his level of understanding and maturity is below that of his chronological age. The younger children have no memory of the US, they wish to remain in the UK and there is no evidential basis to support they are of an age and maturity where their views should be considered.
61. Turning to the issue of discretion in relation to the settlement defence which is established I am satisfied that it should be exercised so that the children do not return to the US. In reaching that conclusion I have considered the following matters:
- (i) Whilst there remains inherent uncertainty to the children's circumstances here in that they have no right to live here, they remain at risk of deportation if the asylum appeal is unsuccessful, which could be a less supported departure than one made under the supervision of this court, the evidence points to the children having found a stability and security here, particularly in the last two years.
  - (ii) I accept the evidence of Ms Demery that it is likely to be inimical to the children's welfare for them to return to the US bearing in mind the instability that would cause to their education and day to day lives, even in the context of the undetermined asylum appeal and the inherent uncertainties for the children that causes.
  - (iii) It is right that to date the children's relationship with their father has not been maintained and restoring that relationship is likely to be more difficult if the children remain here. However, I accept that it will not be straightforward if the children return to the US, particularly if they return to a different State and this factor has to be considered in the context of the other relevant matters the court needs to consider.
  - (iv) There is an inherent uncertainty to the children's situation here due to the lack of any right to remain here and the consequences of the outcome of the asylum appeal being uncertain. This court cannot predict the outcome of that process, it would be

wrong to do so. The importance is it should be weighed in the balance with the other evidence that points towards the stability of the children.

- (v) I have carefully considered the policy considerations in this case and the important need for the message to go out to potential abductors. However, that has to be looked at in the particular circumstances of this case where the application is made after a considerable delay. Whilst the father has given an account of the delay and the court weighs in the balance the difficulties he sets out there are some gaps in his account, in particular the gap between the end of 2021 and early 2023, where there is only very limited information as to the steps the father took.

62. For the reasons set out above the father's application is dismissed.