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THE INTERPLAY BETWEEN FAMILY LAW AND IMMIGRATION LAW

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Immigration issues in care proceedings

Matters of immigration law increasingly arise in proceedings relating to children and families, and whilst to some practitioners they may appear daunting due to the myriad terms and rules deployed in immigration law, it is important to tackle any issues early on and to seek specialist advice as needed. This has been discussed by the court many times and the case of *Y (Failure to Clarify Immigration Status), Re* [2024] EWFC 159 reminds us all that the question of immigration status in care proceedings involving a foreign national child or a family with a connection to a foreign jurisdiction must be considered at the point the proceedings are issued.

The court highlighted that it is unacceptable to leave issues in respect of a child's immigration status unresolved when the court makes a final public law order in respect of the child. The judgment then goes on to give useful guidance on how to approach this issue, including seeking disclosure from the Secretary of State for the Home Department (SSHD) by way of an EX660, which is a form explicitly created for the family court to obtain information about an individual's immigration status from the SSHD. Once relevant information is disclosed, parties can then identify any issues arising from a child's immigration status and, if necessary, secure the evidence or expert opinion required to address those issues ahead of the issues resolution hearing or final hearing. It is really important for all professionals involved in care proceedings to ensure that the local authority, children's guardians and independent social workers are aware of any concerns regarding the immigration status of children or other parties in care proceedings and to identify how this may impact on an assessment of the children's best interests and on care planning, as well as on practical issues regarding whether the parents and/or family members are able to remain in the UK.

There is also a protocol governing communication between judges in the family court and the immigration tribunal to ensure that they can seek and share information where an immigration appeal is pending before the tribunal and there are family court proceedings ongoing, and the immigration appeal outcome is likely to have an impact on the welfare of the child. This protocol confirms that it is not the role of judges in either jurisdiction to predict the outcome of the proceedings in the other jurisdiction. It also states that when the family court decision is likely to be a 'weighty consideration' in the immigration decision, it is likely to be best that the family court makes the decision before any immigration decision is made.

It is important for professionals to consider immigration issues in relation to any family members living outside the UK who put themselves forward for assessment, or who should be considered for assessment as connected carers, to identify whether they should come to the UK for assessment, or can be assessed at home. This may also include family and friends living in the UK who may be here on visas for a limited period of time and therefore cannot automatically remain in the UK. The impact of this on the children and the assessment of the children's best interests must be considered. This must be done at the start of proceedings and any assessments must fit within the children's timescales.