

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

**FAMILY DIVISION**

**OFFICE OF CARE AND PROTECTION**

**IN THE MATTER OF AN APPLICATION FOR AN ORDER FOR  
ADOPTION BY DMCC**

**AND IN THE MATTER OF FI A CHILD**

**MORGAN J**

[1] The Applicant, D McC, Seeks an adoption order in respect of F I, a child, pursuant to the Adoption (Northern Ireland) Order 1987. This judgment is being distributed on the strict understanding that no person may be identified by name or location other than those identified by name in the judgment itself and that in particular the anonymity of the child and the other members of her family must be strictly preserved. For reasons which will be apparent from the judgment I give leave to the Department of Health, Social Services and Public Safety (the Department) to provide through government and diplomatic channels a copy of this judgment to the Kosovo authorities if they so wish.

[2] The applicant is a professional person domiciled in Northern Ireland. She worked in Kosovo from January 2000 with a religious organisation and had contact with the child. The child was born on 30 November 1999 and is a Kosovo national. Her father had died on 15 September 1999. The child was the youngest of eight children and her mother's economic and social circumstances were such that she felt unable to sustain the child. She asked the applicant to adopt the child.

[3] On 3 November 2004 a Trust completed an adoption assessment of the applicant which was positive and the applicant was approved by the Adoption Panel. The applicant then return to Kosovo and the child was taken

into her full-time care. A certificate of eligibility was issued by the Department of Health in the United Kingdom on 12 January 2005. By Decision 314/05 dated 6 September 2005 the applicant was granted the right to be the legal Guardian of the child by the relevant Kosovo authorities.

[4] In right of her position as Guardian of the child the applicant was granted leave to bring the child to the United Kingdom. On 13 September 2005 the applicant and the child left Kosovo and entered Northern Ireland. The child entered the United Kingdom on a six-month visitor's visa. That has been extended from time to time. On 25 July 2006 the applicant received authorisation from the Kosovo authorities to extend the child's stay to the end of 2006 on condition of the child was to be brought to Kosovo to visit the child's birth family for a few days. While the applicant was preparing to return to Kosovo with the child she noted that the child developed symptoms of bed wetting, emotionally labile, separation anxiety and other regressive behaviour. A report dated 2 October 2006 was prepared by a consultant paediatrician who concluded that the trip had triggered disturbing behaviour and extreme anxiety. She recommended that the trip should be postponed and both the Kosovo and UK authorities agreed.

[5] On 11 November 2006 the Kosovo authorities agreed that the child could continue to live with the applicant until 15 August 2007 in the United Kingdom but stated that the applicant must bring the child to Kosovo for a few days to visit her family by that date. The child has benefited from indirect contact by telephone with her family but her anxiety about a return to Kosovo remains and it appears that the child is deeply anxious that nothing should happen to imperil the secure and loving environment in which she now resides.

[6] On 15 January 2007 the applicant notified the Trust of her intention to adopt the child. On the same day she lodged her application to adopt. On 29 May 2007 notice of the proposed adoption hearing was served on the mother of the child and the Director of Social Services in Peje, Kosovo. On 13 June 2007 the Department filed a Notice of Objection to the making of an adoption order. On 14 June 2007 the Kosovo social services lodged notice to object to the proposed adoption.

[7] The suitability of the applicant as a prospective adopter and the general welfare considerations relating to the child have been carefully investigated by the relevant Trust and it is clear that in terms of ordinary domestic principles an adoption order is appropriate in this case. The Department has, however, vigorously opposed the making of an order in this case because the child was habitually resident outside the United Kingdom at the time of her entry into this country.

[8] By virtue of article 58ZA of the Adoption (Northern Ireland) Order 1987 it is an offence for a person habitually resident in the British Isles to bring into the United Kingdom for the purposes of adoption a child who is habitually resident outside those Islands unless prescribed requirements are satisfied. Those requirements are contained in the Adoption of Children from Overseas Regulations (Northern Ireland) 2002 and in particular in Regulation 3. At the time of the child's entry into Northern Ireland the requirement in Regulation 3 was as follows:

*"Requirements applying to prospective adopters*

3.—(1) The requirements which a prospective adopter must satisfy before bringing a child into the United Kingdom are those prescribed in paragraph (2).

(2) The requirements are that—

(a) the prospective adopter has applied to an adoption agency for assessment of his suitability to be an adoptive parent and has followed such procedure and provided such information to the agency as it may request in order to enable it to undertake such an assessment;

(b) an adoption agency has notified the prospective adopter in writing of a decision to approve him as suitable to be an adoptive parent; and

(c) the Secretary of State for Health has notified the prospective adopter in writing that he is prepared to issue a certificate confirming to the relevant overseas authority that the prospective adopter has been assessed and approved as suitable to be an adoptive parent and that the child will be authorised to reside permanently within the British Islands, if entry clearance is granted and an adoption order is made."

It is accepted by all parties that the requirements of the Regulation as it was then drafted were in fact satisfied by the applicant. It appears, however, that it was the intent of the regulations that before entry clearance for the purposes of adoption was granted the Department would require the consent of the relevant authority in the other jurisdiction to the proposed adoption. In this case entry clearance was granted to the child as a visitor. It is accepted by all parties that in this case there is no question of manipulation of the system by the applicant and entry on this basis was a reflection of the complicated nature of the system.

[9] Regulation 3 was amended with effect from 21 August 2006. By virtue of the amendment the prospective adopter must now ensure that the Department has notified the prospective adopter that it agrees that the prospective adopter's case should proceed. The Department will not issue such a notification unless it in turn has been notified by the other jurisdiction that it agrees that the adoption should proceed. By virtue of that amendment the situation which arose in this case could not occur again.

[10] Although the Department does not point to any identifiable breach of the Regulations it relies on the principles of international comity to sustain its objection. It pointed out that if this were a Hague Convention case the consent of the central authority in the child's state would be required. It further pointed out that the policy behind the 2002 Regulations was to secure the same protection in overseas adoption cases. It submitted, correctly, that these protections were designed to secure the safety and protection of vulnerable children and vulnerable families. It is clearly undesirable that the child might have a status in the United Kingdom which would not be recognised in the country in which she was born and in which her birth family resides.

[11] These are formidable objections. They are considerations which I must take into account in considering the child's welfare under article 9 of the 1987 Order as the most important consideration. I also take into account that my inquiries have revealed no other case where a child from Kosovo was adopted without the agreement of the relevant authorities in Kosovo. I have come to the conclusion, however, that the circumstances in this case are exceptional and that I should make the order. I consider that the following factors are significant:

(a) The child is now 7 and has formed a deep attachment with the applicant who has exclusively cared for her and nurtured her in the last three years and formed a close relationship with her in the years before that.

(b) The child is well settled in her new environment so that a permanent return to Kosovo would be deeply disruptive for her.

(c) The medical evidence demonstrates that the child was deeply traumatised in her early years. Any uncertainty about her future would be likely to give rise to significant medical issues and the very real possibility of significant harm to the child.

(d) The applicant has always been open and transparent about her intentions.

(e) This is a unique application. As a result of the amendment to the Regulations introduced with effect from 21 August 2006 this situation could

not be repeated so that the authorities in Kosovo can be confident that this case could not act as a precedent in any subsequent cases.

(f) The child has benefited from indirect contact with her birth family but her return to Kosovo to enjoy direct contact has given rise to anxiety about her situation leading to significant medical issues. The applicant is anxious to facilitate direct contact in Kosovo with the child's birth family. I consider that the making of an adoption order is likely to give the child a degree of confidence in her new status which should assist in persuading her without anxiety to visit her birth family in Kosovo.

[12] I want to make it clear that I am entirely satisfied that all times the authorities in Kosovo have acted with the utmost regard for the welfare of this child and for the welfare of children generally. The protections put in place in relation to intercountry adoptions are a critical part of the system of protection and safety for children such as this child. The diligence and care with which the authorities in Kosovo have approached this case is indicative of their strong commitment to the welfare of children. I hope that they will be reassured that this exceptional case will set no precedent for the future.