

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND  
FAMILY DIVISION

Re Luiz (Application for a residence order by Northern Irish step mother in  
respect of a Brazilian National)

STEPHENS J

**Introduction and the applications**

[1] I have anonymised this judgment. The names used are not the real names of any of the individuals involved. Nothing should be reported which would identify the child or any member of his extended family. I refer to –

- (a) the child as **Luiz**
- (b) the step mother as **Roisin**
- (c) the father as **Carlos**
- (d) the mother as **Yarah**
- (e) the mother's partner as **Aaron**
- (f) the daughters of the mother and Aaron, and accordingly Luiz's maternal half siblings, as **Yariza and Isabella**
- (g) a previous partner of the father as **Iara**
- (h) the son of the father and Iara, and accordingly Luiz's paternal half sibling, as **Thiago**
- (i) a further previous partner of the father as **Larissa**
- (j) the maternal grandmother as **Gabriela**
- (k) the maternal grandfather as **Sanchez**
- (l) the paternal grandmother as **Alessandra**
- (m) the paternal grandfather as **Abel**
- (n) the paternal step grandfather as **Aja**

[2] Roisin, 32, who was born and has lived in Northern Ireland throughout her life, a European Economic Area national, is the stepmother of Luiz, 7, a Brazilian national. She married Luiz's father, Carlos, 28, a Brazilian national, on 31 January 2004. Some 5 years later and by at the latest March 2009, the marriage had irretrievably broken down. Carlos wishes to return to Brazil with Luiz so that they can reside together initially at Carlos' mother's

and step father's house. That is the house of Alessandra and Aja. At some future date Carlos plans that he and Luiz will move to a separate house in Brazil. Roisin would like Luiz to remain in Northern Ireland residing with her. Accordingly on 10 March 2009 she brought an application under Article 8 of the Children (Northern Ireland) Order 1995 seeking a Residence Order in respect of Luiz and also a Prohibited Steps Order to prevent Luiz being taken out of the jurisdiction.

[3] Despite the breakdown of their marriage Roisin and Carlos continue to reside in the same house with Luiz. Following an incident on 3 June 2009 and by an application dated 5 June 2009 Roisin sought a Non Molestation Order and an Occupancy Order under the Family Homes and Domestic Violence (Northern Ireland) Order 1998. At the conclusion of the evidence it was submitted on behalf of Roisin that intervening events had demonstrated that the situation in the household, which is temporary, could be managed. Temporary in that if Roisin's applications for a residence order and a prohibited steps order were successful then Carlos would be leaving the house and returning to Brazil. If Roisin's applications were unsuccessful then Carlos and Luiz would be leaving the house and returning to Brazil. Accordingly in the event Roisin did not wish to pursue this application. I dismiss it but at the same time make it clear that if events do not unfold in an appropriate manner then a further application may be brought.

[4] Carlos had been in a relationship for a period of approximately one year with Luiz's mother, Yarah, but they were not married. His name is on Luiz's birth certificate but as a matter of Northern Irish law this would not have given him parental responsibility as Luiz was born prior to 15 April 2002 the date upon which the law was changed, see Section 1(2) of the Family Law Act (Northern Ireland) 2001. Carlos has applied for a Parental Responsibility Order under Article 7 (1) (c) of the Children's (Northern Ireland) Order 1995. At the conclusion of the evidence all the parties submitted or conceded that regardless of the outcome of Roisin's applications for a residence order and a prohibited steps order, that this was a case in which a parental responsibility order should be made in favour of Carlos. Applying the principles set out by Higgins J in *2000/175 HIGF 3426* at pages 49 to 51 and having considered the evidence, I agree. I make a parental responsibility order in favour of Carlos.

[5] Accordingly the applications which remain to be determined are Roisin's applications for a residence order and a prohibited steps order. Luiz's mother, Yarah, wished to be and has been, joined as a party to those applications. She participated via a webcam link to a solicitor's office in City C in Brazil except on 29 June 2009 and 10 July 2009. Judgment was due to be delivered on 10 July 2009 and it then became apparent that she and her immediate family had moved from City C to live on a farm outside City D

(though initially there was confusion as to the exact city due to Yarah's lack of geographical knowledge).

[6] Mrs Keegan QC and Ms Hughes appeared on behalf of Roisin, Ms Walsh QC and Ms McCaffrey appeared on behalf of Carlos, Ms McGreenera QC and Ms Steele appeared on behalf of Yarah and Mr Long QC and Ms Pauley appeared on behalf of the Official Solicitor who was appointed to represent Luiz. I am indebted to all the sets of counsel for their careful preparation of the case and their well-marshalled written and oral submissions.

[7] The parties are requested to consider the terms of this judgment and to inform the Office of Care and Protection in writing within one week as to whether there is any reason why the judgment should not be published on the Court Service website or as to whether it requires any further anonymisation prior to publication. If the Office is not so informed within that timescale then it will be submitted to the Library for publication in its present form.

### **Legal principles in relation to residence and prohibited steps application**

[8] In determining the applications for residence and prohibited steps orders I seek to apply the course which is in the best interests of Luiz whose welfare is the court's paramount consideration. I have particular regard to the matters set out in Article 3(3) of the Children (Northern Ireland) Order 1995. I have made it clear that in arriving at a decision in this case I seek to apply the course which is in the best interests of Luiz and in doing that I

"have in mind that in the ordinary way the rearing of a child by his or her biological parent can be expected to be in the child's best interests, both in the short term and also, and importantly, in the longer term,"

see *Re G (Children)* [2006] 2 FLR 629 at 631 paragraph [2]. The application of the welfare test requires the court to consider in the individual circumstances of each case any special contribution which natural parents in that case can make to their child. The relationships between natural parents and their children cover a wide spectrum and accordingly there may be cases in which a consideration of the individual circumstances leads to the conclusion, for instance, that a particular natural parent has and will have no love for or commitment to a child and accordingly the child is unable to benefit in that respect. Examples of the special contributions to the welfare of a child that a natural parent can make are referred to by the Law Commission at paragraph 6.22 of its "1986 Review of Child Law: Custody, Working Paper No. 96 (HMSO), 1986") and include a contribution to the sense of identity and self-esteem of a child. Any list of examples would not be exhaustive but rather as

Lord MacDermott observed in *J and Anor v C and Others* [1970] AC 668 the claims and wishes of parents “can be capable of administering to the total welfare of the child in a special way”. Lady Hale stated in *Re G (Children)* that a natural parent can bring a very special sense of love for and commitment to a child which will be of great benefit to the child. The child can reap the benefit of that love and commitment. That knowledge of origin and lineage is also an important component in finding an individual sense of worth as one grows up. That the knowledge of a genetic link can be an important component in the love and commitment felt by the wider family. That in the vast majority of cases for the natural mother carrying and giving birth to a child brings with it a very special relationship between mother and child. It is the totality of, together with the individual components of, the impact of the natural relationship on Luiz’s welfare to which I will have regard during the course of a detailed consideration of all the individual circumstances of this case.

[9] In addition to considering genetic parenthood, gestational parenthood and social and psychological parenthood I seek to appreciate and consider the factors pointing in each direction in this case to arrive at the right solution which is in Luiz’s best interests of the alternative wrong or flawed solutions with which the court is presented, see *Clarke Hunt v Newcombe* [1982] 4 FLR 482 at 486. Such factors include the importance of the status quo in a child’s life as emphasised by Ormrod LJ in *D v M (Minors: Custody Appeal)* [1983] Fam 33 at 41 in which he said:

“It is generally accepted by those who are professionally concerned with children that, particularly in the early years, continuity of care is a most important part of a child’s sense of security and the disruption of established bonds is to be avoided whenever possible to do so. Where, as in this case, a child of two years has been brought up without interruption by the mother (or a mother substitute) it should not be removed from that care unless there are strong countervailing reasons for doing so. This is not only the professional view; it is commonly accepted in all walks of life.”

Luiz’s present main attachment figure is Roisin. He presently lives in, is at school in and has formed friendships in Northern Ireland. Factually the status quo in Luiz’s life in broad terms means remaining in Northern Ireland with Roisin.

[10] In relation to the wishes and feelings of Luiz I gratefully adopt the analysis of Gillen J in *Re E* [2005] NI Fam 12 at paragraph [24] (iii).

## **Conflict of evidence**

[11] There were a number of fundamental conflicts of evidence in this case. The resolution of those conflicts is an important component in this case not only to determine what has occurred but also to assist in forming a view as to how much reliance can be placed on the different individual's statements of future intentions. Accordingly I consider in turn the credibility of the step mother, Roisin, the father, Carlos, the mother, Yarah, and the paternal grandmother, Alessandra, all of whom have given evidence in this case.

## **Credibility of the step mother, Roisin**

[12] There was a factual dispute as to the conditions in which Luiz was living with his maternal grandparents in Brazil in September 2005. Roisin stated that when she visited Luiz at his maternal grandparent's house she was "appalled" and "shocked by the conditions in which the child resided". She stated that the home was "a small structure, something which I would describe as a shed with a corrugated iron roof". She entered "one internal room in which there was only a sofa" and "outside the property there was a large open drain carrying sewage within feet of the front door of the house. There was no running water and the conditions were most unsanitary."

[13] Roisin also stated that she was aware that Luiz's maternal grandparents did not have paid employment and there were no visible means of income.

[14] She then described the effect of these "appalling" "shocking" and "most unsanitary" conditions and the lack of any visible means of income on Luiz. She stated that he presented as "extremely thin" with a serious skin complaint with large white patches of dry skin and red sores on his body. That he had a lack of basic clothing.

[15] It was never suggested to Roisin that the condition of Luiz's maternal grandparent's house and the circumstances in which they lived were anything other than modest. In addition no digital photographs were produced by Carlos or Yarah of the house. If photographs had been produced then they could have demonstrated where the truth lay in relation to this factual dispute. I conclude that the conditions were not as bad as suggested by Roisin though I accept for instance that Luiz did lack some basic clothing which then had to be purchased by Carlos and Roisin.

[16] I return to Roisin's description. A number of the constituent elements of her description were in dispute. In her statement Roisin alleged that the large open drain contained sewage. The clear assertion that it contained sewage changed in her evidence in chief. She initially stated that there was a gully across the door and that she was not sure what it was. That "it was

like running water". Later on she stated that it was "a sewer or something across the door". In cross-examination she described the gulley as being one foot from the door. That she had to step over the gulley to enter the house and the door was left open when she was inside. However she went on to say that she did not smell anything as she stepped over the gulley or when she was in the house. That if it had been sewage she would have thought that she would have smelt it. That she saw nothing in the gulley apart from brown coloured water. That the soil in the area was red coloured clay. She was unsure of the depth of the water. She was unsure whether it was a drain for a single house. The distance of this drain from the house was stated to be about one foot whereas in her statement it was within feet of the front of the house.

[17] I found this part of Roisin's evidence unsatisfactory. From a reading of her statement I had gained the impression that this was a large and therefore perhaps a communal, open sewer beside which, by virtue of destitution, Luiz was compelled to live.

[18] I turn to consider other constituent elements of Roisin's description. Her statement contains the assertion that "there was no running water" in Luiz's maternal grandparents house. In her evidence Roisin made it clear that she had only been in one room in the house and she did not know one way or the other whether there was running water in the rest of the house.

[19] Roisin stated in evidence that the only room which she entered was clean. That the reference to appalling, shocking and most unsanitary conditions was a reference to what she had initially described as a large open drain carrying sewage.

[20] I accept Carlos' evidence that Luiz's maternal grandparents do have financial means in that she works as a housekeeper and he in a factory. I consider that they are able to maintain a relatively modest standard of living. I consider that such would have been apparent to Roisin. That she would have been able to appreciate from what she observed and what she could have found out that this was not a household in which there were no visible means of income.

[21] Part of Roisin's case is that in September 2005 Luiz physically suffered as a result of economic hardship and these shocking, appalling and most unsanitary conditions. However she then proceeded to describe what Luiz was like when she met him. She described a normal 4 year old child without any significant features. Specifically that he was happy, clean and healthy. That he was skinny but not undernourished. That at that stage he did not have any skin condition though he did subsequently suffer from eczema. This was in contrast to her statement in which she had described in September 2005 a child who was "extremely thin" with a serious skin

complaint involving large white patches of dry skin and red sores on his body. I consider that the impression she gave of a child suffering harm was incorrect.

[22] I have considered these inaccuracies individually and cumulatively together with all the other aspects of her evidence. I have given consideration as to whether Roisin was deliberately giving false and misleading evidence to the court. I had the opportunity of observing her in the witness box and she did not appear to me to be an intrinsically manipulative or dishonest person. She was desperately concerned for Luiz. There is no doubt that she loves Luiz and wishes to hold onto him. She considered that she could provide an excellent standard of care for him in the future as she has demonstrated she has in the past. She is deeply distrustful of Carlos, his future intentions in respect of Luiz and the standard of care that he will provide for Luiz. Her evidence has also to be seen in the context that she had an ectopic pregnancy and miscarriage in 2004. That she has received treatment for infertility. I consider that she rationalises some of her actions by a belief that the conditions in Brazil were in fact worst than they were. The inaccuracies in her evidence are motivated by the very positive contributions that she has made and can make for Luiz, by her fear that Carlos is intent on abandoning Luiz in Brazil and by her desire for a child. I therefore approach her evidence with caution. I also bear that assessment of Roisin in mind in determining how she could provide for Luiz in the future if he was to remain with her in Northern Ireland.

### **Credibility of the father, Carlos**

[23] I turn to consider the credibility of Carlos. I consider that in relation to certain aspects of his evidence he was not being accurate and that he was willing to deliberately tailor and change his evidence. Roisin's initial statement described how Luiz had lived with Yarah but that he had moved to his maternal grandparent's house because Yarah's new partner, Aaron, would not marry her if she was caring for him. That in September 2005 Luiz resided in his maternal grandparent's house. Carlos did not suggest in his replying statement that this was incorrect. In cross-examination of Roisin it was suggested to her that the reason why Luiz could no longer reside with Yarah was that both she and her new partner worked. In addition the whole concentration of the cross-examination was that Luiz's accommodation with his maternal grandparents, though modest, was perfectly acceptable. However, when Carlos came to give evidence he stated that in September 2005 Luiz lived in Yarah's house. This had not been put in cross-examination and I do not accept it as the truth. I consider that Carlos was altering his evidence to portray Yarah as having a closer day to day connection with Luiz than she had. I consider that Carlos knew that this evidence was false.

[24] There were other aspects of Carlos's evidence which I do not accept. He stated that when he went to Brazil in September 2006 on holiday and with a view to bringing Luiz back to Northern Ireland he had discussions with Yarah over a two week period to obtain her agreement that Luiz could leave Brazil. That he engaged the support of Yarah's mother in these discussions. That Yarah agreed but only on the basis that Luiz returned to Brazil after 3 years. It is a requirement of Brazilian law that when a single parent leaves the country with a child that parent has to have a judicial permit. In order to obtain the judicial permit Yarah had to sign a document entitled "Request for permission to travel abroad and judicial permit for issue of passport." That document was dated 1 September 2006 and was signed at the very start of Carlos' visit to Brazil. There was no opportunity for a two week discussion before the permit was signed. When faced with this inconsistency Carlos then stated that Yarah signed the permit but kept it and did not give it to him until she accepted the plan that Luiz would leave Brazil on the basis that he would return after three years. I just do not accept that explanation. There was no reason why she could not have signed the permit after she had agreed to the proposition. I would have expected this explanation to have been given earlier either in Carlos's statements or in his evidence if it was correct. It was not supported by Yarah in her evidence.

[25] Carlos had an earlier relationship in Brazil with Iara. They had a son Thiago who is 7 months older than Luiz. Since the end of 2002 Carlos has provided no financial support for Thiago, who presently lives with his maternal grandparents. His mother, Iara, lives and works in Portugal as an economic migrant holding down two lowly paid jobs, as a cleaner and a waitress, requiring her to work both during the day and in the evenings. Carlos states that he was told by Iara that as she was financially secure that he no longer had to make a financial contribution for Thiago. Carlos, despite being in employment, stated that he thereafter made no financial contribution. I just do not accept that Iara, who was working so hard for relatively modest rewards, would absolve Carlos from his financial obligations in that way. Even if it were true it gives an insight into Carlos in that he was prepared to accept such a proposition.

[26] Having seen Carlos and formed an assessment of him, including the nuances of his reactions, I do not accept that he is a truthful witness. I consider that his character is primarily self centred. I make it clear that in arriving at those conclusions I have taken into account all the aspects of the Carlos' evidence that caused me concern both individually and cumulatively, together with his presentation in the witness box. I do not consider him to be a reliable person in the sense that I find that he is an untruthful witness. Also in the sense that I do not consider that he will do what he says but rather I find that he will act in accordance with his own interests irrespective of the effect of his actions on Luiz. For instance I accept the evidence of Roisin that he has in the past said that he did not care what happened to Luiz as long as



she did not have him. I have considered whether that remark can be explained on the basis of a transitory angry outburst and to an extent it can but I conclude that it does reflect enduring elements of Carlos' character: an element of maliciousness and a disregard of Luiz. I also consider that Carlos would not promote, encourage or validate contact between Luiz and Roisin if Luiz returned to Brazil and there would be little real prospect of maintaining contact.

### **Credibility of the mother, Yarah and paternal grandmother, Alessandra**

[27] I was informed that Yarah, her partner Aaron and their daughters Yariza and Isabella all resided in City C in Brazil some 10 minutes from Luiz's paternal grandparents' house. In her first statement Yarah said

"I live very near (Luiz's paternal grandparents') house and therefore (Luiz) would also be able to see me and his two half sisters regularly when he returns home to Brazil"

This theme was repeated in her second statement.

"7. If (Luiz) were able to return to Brazil I would wish to play a full a role (sic) as possible in his day to day care. There are 2 options being that (Carlos) and I would share care of (Luiz) or (Luiz) could stay with his father but would have regular contact and visits to me.

...

9. Where (Carlos) proposes to reside is approximately ten minutes by car from my house. I reside in my own home with her (sic) two daughters aged 3 and 7 months respectively and my husband (Aaron). My husband (Aaron) already knows (Luiz) really well as he (Luiz) would had had contact with him for one year prior to heading to Northern Ireland. There is plenty of room for (Luiz) to stay at my home and all his needs would be comfortably met."

[28] On 6 June 2009 Yarah's partner Aaron received an offer of employment on the farm outside City D. The amount of pay that he was offered was double what he received in City C. In addition there were a number of other benefits including a rent free house, free water and some free food. Given the financial circumstances of Yarah's family this was a very welcome offer.

[29] On 10 June 2009 Aaron travelled to the farm outside City D and took up his employment. Yarah did not travel with him. Aaron wished to see the accommodation and form a view as to whether he wished to accept the offer. He liked what he saw and on 10 June 2009 he accepted the employment and informed Yarah that he had done so. There was an issue as to when exactly it

was decided that Yarah, Yariza and Isabella would move from City C to the farm outside City D. Yarah states that this was only finally decided on Saturday 27 June 2009 on the very day that she and the children moved and the day after she had given evidence on 26 June 2009. I reject her evidence in that respect. I consider that when she came to give evidence on 26 June 2009 she knew that she and her daughters were moving to the farm outside City D and also that she was aware of the significance in this case of only being 10 minutes away from where it was proposed that Luiz would live in Brazil and being 5 hours by bus or 2 hours by car from where it was proposed that Luiz would live in Brazil. Yarah and Aaron do not have a car. I consider that Yarah had decided to move on 10/6/09. It is also significant that she telephoned wishing to speak to Carlos on that day.

[30] On 15 June 2009 Yarah was interviewed by the expert witness, Dr Denise McCartan, Chartered Clinical Psychologist, and again she returned to the theme set out in her statements. When asked whether she was happy for Luiz to live with Carlos in Brazil she said yes and she could accept him living with Carlos "at the moment" because he would be near her. There was no reference to any potential move by Yarah, Aaron and their daughters to the farm outside City D.

[31] Alessandra states that on 24 June 2009 she was told by Yarah "that her partner had got a new job and the money was much much better and they were going to move." However Alessandra qualified that by indicating that she was told that the move was not certain and it was dependent on a final agreement between Aaron and his employer. However when Yarah dealt with this issue she stated that the final agreement between Aaron and his new employer had been reached on 10 June 2009. That the reservation as to whether she and her daughters would move was that she wished to stay in City C. I consider that those two explanations are incompatible. I hold that Yarah had decided to move with her daughters and that she informed Alessandra of this on 24 June 2009.

[32] On 24 June 2009 Carlos tells his solicitor that he had been told by his mother Alessandra, that Yarah *might* be moving away from City C because of Aaron's work, but that he was not sure of this and he was assuming that if it happened it would be a temporary move. In passing this information to his solicitor Carlos acted appropriately and I am not prepared to find that he was in fact told that the information imparted to him was definite.

[33] On 25 June 2009 Alessandra gave evidence and made no mention of Yarah's decision to move from City C but rather said that there would be contact between Yarah and Luiz if he returned to Brazil as Yarah lived quite close. I consider that Alessandra knew that this information was incorrect.

[34] On 26 June 2009 Yarah gave evidence during which she confirmed that the contents of her statements were true. She gave no indication that she had decided to move to the farm outside City D. Alessandra heard her giving her evidence. As soon as she completed her evidence she informed the solicitor in Brazil that she was to move to City D and that the reason for doing so was because Aaron had obtained a job in that city. There is no explanation which it is possible to accept as to why she did not tell the court.

[35] On 27 June 2009 Yarah and her daughters moved to the farm outside City D to join Aaron. In a further statement dated 20 July 2009 and to the question "Does she intend to live there (that is in City D) permanently even should Luiz be returned to live in City C with his father" she replied "That decision is made by Yarah's husband. She doesn't know how to say if it is permanent or no, or the period that will be living there."

[36] On 29 June 2009 the parties made closing submissions. The submissions on behalf of Yarah asserted that she was capable of meeting Luiz's needs in whatever way was required and that the evidence did not dispute this. It was also asserted that she and Carlos have extended family in Brazil that would be very involved in Luiz's life. The Official Solicitor on behalf of Luiz submitted that if Carlos did not remain Luiz's primary carer then there was no reason to suppose that Yarah could not meet his needs in Brazil. On behalf of Carlos it was submitted that Yarah could provide Luiz with a mother's care. That if Luiz returns to Brazil Yarah would be able to meaningfully foster a relationship between Luiz and his half sisters. That if for any reason Carlos was not capable of looking after Luiz clearly she would be available to him. That she is an extremely important link for Luiz to his culture and his roots.

[37] On 10 July 2009 I was to give judgment. The web cam link to Brazil had not been set up and I enquired as to whether Yarah's representatives wished it to be set up before I delivered a written judgment or whether it was sufficient to deliver the judgment and allow them to take their client through its contents. I was informed that they did wish the web cam to be set up so that they could check some information that had been given to them the previous day by the solicitor in City C in Brazil from whose office Yarah had participated in the proceedings. I enquired as to the nature of the information and was informed for the first time that it was thought that Yarah, Aaron, and their daughters had moved from City C to live in City D. This was subsequently confirmed with the solicitor in Brazil when the web cam link was established. Accordingly if Luiz returned to Brazil, instead of Yarah and her immediate family being 10 minutes away from him, capable of adjusting on a daily basis to his needs, they would be 2 or 5 hours away depending on the type of transport. The proximity of Yarah to where it was proposed that Luiz would live had played a significant part in the case to the knowledge of Yarah and Alessandra.

[38] I was concerned that Yarah had given incorrect information to the court as to the proposed arrangements in Brazil and I afforded her an opportunity to file a further statement which she did on 20 July 2009. I also heard further evidence in relation to this issue from Carlos, Yarah, Alessandra and Miss Nugent, the solicitor for Carlos. I consider that the evidence that Yarah had given was incorrect to her knowledge. I also consider that Alessandra's evidence was incorrect to her knowledge.

[39] I consider that this move from one City to another is in character for Yarah in that in the past she has failed to prioritise Luiz's needs. I accept that the reason why Luiz was living with his maternal grandparents in September 2005 was because Yarah's partner Aaron would not marry her if she was caring for Luiz and so it was decided that Luiz would reside with Gabriela. That Aaron did not wish to have Luiz in his house which Yarah tolerated, because of her circumstances and on the basis that Aaron fulfilled her relationship needs and her needs for a secure, stable and financially viable family unit. I consider that in the past Luiz was excluded from Yarah's most immediate and intimate family group, a matter about which he will have increasing awareness as he matures.

[40] I consider that Yarah has some insight into Luiz's needs and the character of Carlos as is evidenced by a telephone call which occurred at about 10 pm on 10 June 2009, the very day on which I consider that it is probable that Yarah decided to move to the farm outside City D. Yarah telephoned the house in Northern Ireland and informed Roisin that she wished to speak to Carlos. Roisin informed her that Carlos was out. Yarah then wished to speak to Luiz and upon being informed that Luiz was in bed, Yarah and Roisin continued to have a conversation. Roisin states that this conversation lasted about 15 minutes. That it was conducted almost entirely in Portuguese. That Roisin was asked not to tell Carlos that Yarah had rung. That Yarah enquired as to whether Roisin cared for Luiz. Roisin said that she did. That Yarah said that she wished Luiz to remain with Roisin but she would like to have contact with him. Yarah accepts that she did telephone but denies that such a conversation or any substantial conversation took place. I prefer the evidence of Roisin. I consider that Yarah comes under pressure from Aaron as to where and with whom she lives, including whether she lives with her own son Luiz and that she also comes under pressure from Carlos. Her true feelings as to Luiz's needs and her views as to the character of Carlos are accurately reflected by the contents of that telephone conversation.

### **Resolution of the conflicts of evidence**

[41] This is a case in which I have had some difficulties in relying on the evidence of any one person. However I consider that there is a fundamental

distinction as to the underlying reasons for the lack of reliability of each of the witnesses. In general I prefer the evidence of Roisin. I consider that Roisin is focussed and will remain focussed on Luiz in the future. That Carlos is intrinsically self-centred. That he has and will in the future act in his own interests irrespective of the effect on Luiz. That Yarah is borne down by circumstances and the pressures exerted on her. I consider that Luiz will be able to rely on Roisin's statements as to her future intentions and that he would not be able to rely on Carlos or Yarah and also but to a lesser extent he would not be able to rely on Alessandra. I set out the findings of fact in this case.

### **Paternal family structure in Brazil**

[42] Luiz's paternal grandparents, both Brazilian nationals, are Abel and Alessandra. They were married but are now divorced. I heard no evidence about Luiz's paternal grandfather, Abel. There was no suggestion that he still played a role in the life of the family in Brazil. In any event Abel and Alessandra had 3 children: one daughter and 2 sons. Carlos is the youngest and the daughter is the eldest. The daughter has 3 children: twins aged 7 and a one year old. Carlos' brother has 2 children one of whom is a 2 year old. Accordingly Carlos has 2 full siblings. He also has step brothers. His mother Alessandra, 52, married Aja, 53, a Brazilian national, some 2½ years ago though they have lived together for over 17 years. Carlos has treated his stepfather, whom he has known since the age of approximately 11, as his father. Aja had 3 sons from a previous marriage. They in turn each have children. The eldest son has 2 children and the others have one child each. One of the children is very close in age to Luiz. The extended paternal family live in close proximity to each other in Brazil though there is a strong element of economic migrancy in the family. Alessandra and Aja together with Carlos and one of his brothers left Brazil for different periods of time to obtain employment.

[43] Luiz's paternal grandmother, Alessandra, and his step-paternal grandfather, Aja, own and occupy a three bedroom house in Brazil which is not subject to any mortgage. They both now work. She works from home making clothes and he is employed as a security guard. I have seen photographs of their house in Brazil and there is no dispute but that it is appropriate accommodation.

[44] It can be seen from this description that Luiz's paternal grandmother, Alessandra, has 10 other grandchildren, apart from Luiz, who all live close to her house in Brazil. His paternal half sibling Thiago also lives in close proximity but whether he remains there on a permanent basis I assume will depend in part on the long term plans of his mother Iara who is presently in Portugal.

[45] The extended paternal family socialise together, know each other well though one can overstate the sense of cohesion and identity with mutual support and assistance. I accept the evidence of Roisin that she was informed by Carlos that his brother and his wife had had a fight, that his brother had been stabbed and had hit his mother. I also accept that what she was told was true. All of the major individuals in the paternal family upon whom Luiz would be relying if he returned to Brazil, that is Carlos, Alessandra and Aja, have previously left Brazil in order to obtain employment. If this was a secure, cohesive and stable extended paternal family in Brazil then if Luiz, returned to Brazil, he would have the opportunity to be a loved, respected and valued member of it. Such mutual bonds would be of considerable assistance to Luiz's self esteem, sense of belonging and sense of worth. However I do not consider this to be the true nature of this family as evidenced by the lack of contact with Luiz's extended paternal family throughout his period in Northern Ireland including a lack of contact on significant occasions such as Luiz's birthday. The extended paternal family has not shown any particular interest in Luiz whilst he has been in Northern Ireland. Allowances have to be made for the distances involved but I consider this lack of interest goes beyond such an explanation. There would be benefits from a greater opportunity for contact with the extended paternal family if Luiz returned to Brazil but in the circumstances of this particular family I keep that in proportion.

### **Maternal family structure in Brazil**

[46] Luiz's mother, Yarah also used to live close to Luiz's paternal grandmother's house until she moved to the farm outside City D. In addition to Luiz she has two young daughters, Yariza and Isabella, aged 7 months and 3 years who are Luiz's maternal half siblings. Her relationship with Luiz's father, Carlos came to an end shortly before Luiz's birth in 2001. Luiz initially lived with her in Gabriela's house, but when Yarah formed a relationship with her present partner and prior to September 2005, Yarah moved to a house very close to her mother's. Between then and October 2006 Luiz lived in Gabriela's house.

[47] Luiz's maternal grandparents are Gabriela and Sanchez. I have resolved the factual disputes as to the standard of the accommodation in which they live and as to their financial circumstances against Roisin. The two youngest sons of Gabriela and Sanchez (and Luiz's uncles) live with them. These sons are aged respectfully 9 and 10. The maternal grandparents' house is within 10 minutes of Luiz's paternal grandparents' house. It was also within 5 minutes of Yarah's house before she moved to the farm outside City D.

### **Roisin's family structure in Northern Ireland**

[48] Roisin's father lives close to her house. Her mother unfortunately died in 2008. She has two brothers and a sister. All her siblings are married each having two children aged between 2 and 12. She also has three uncles an aunt and a godmother living in the vicinity. Carlos states that Roisin's family do not approve of him. None of Roisin's family has given evidence in these proceedings. I do not know whether they support Roisin in her desire to keep Luiz in Northern Ireland. I am not in a position to conclude that Luiz would be a respected and valued member of the extended family in Northern Ireland.

### **Roisin**

[49] Shortly after Carlos and Roisin married Roisin had an ectopic pregnancy which miscarried. Since January 2006 she has been attending a clinic with regard to infertility. The investigations included keyhole surgery in April 2006. Roisin would very much have wished to have had a child. The impact of her desire to have a child is a feature of this case affecting her perceptions of the conditions in Brazil for Luiz in September 2005.

[50] Roisin when asked why she brought the application for a residence order replied by reference to her love for Luiz and because Luiz asked her to help him to stay in Northern Ireland. She placed considerable emphasis on Luiz's wishes and feelings saying that she "Wouldn't be doing this if I thought that he wanted to go back to Brazil". It is clear that Roisin loves Luiz. She overlooks that Luiz's wishes and feelings are affected by the immediate or entirely transitory. That they have also been affected by her incorrect perceptions of the conditions in which Luiz was living before he came to Northern Ireland.

[51] I consider that Roisin would encourage, promote and validate contact with Luiz's biological family in Brazil if he was to remain in Northern Ireland. It is overwhelmingly recognised that she has provided an excellent level of care for Luiz. I am sure that she appreciates the benefits to be gained from and the necessity to work at maintaining and promoting contact. That she will do this.

### **Carlos and his relationship with Iara and his son Thiago**

[52] As I have indicated Carlos had formed an earlier relationship in Brazil with Iara. They had a son Thiago who is 7 months older than Luiz. Carlos was present in the hospital when Thiago was born. After he was born Carlos visited Iara's parents' house to see both Iara and his son Thiago. Carlos asserts that he remains on friendly terms with Iara though I consider that this is overstated. He also states that he gets on with his son Thiago. I conclude that Carlos has had contact with Thiago over the years though he has never lived in the same house as him. I consider that the degree of contact with

Thiago is considerably overstated by Carlos. That he has an involvement in Thiago's life but at no financial or emotional cost to himself and that he is not someone upon whom Thiago can rely either now or in the future.

[53] Carlos provided some initial financial assistance to Lara after Thiago was born by purchasing groceries. This initial financial support for Thiago came to an end when Carlos came to Ireland in 2002 and Lara moved to Portugal.

[54] In conclusion I consider that there is some attachment between Carlos and Thiago. That Carlos is not a father who has abandoned his son, Thiago or who is completely indifferent to his son's, Thiago's welfare. However that Carlos has done little on a practical or emotional level by way of support for Thiago. I do not consider that his role in Thiago's life will increase over the years.

### **Carlos and his relationship with Yarah and his son Luiz**

[55] In 2000 Carlos started a relationship with Yarah who was then at school aged 16 or perhaps just 17. His relationship with Yarah commenced at a time when Lara was pregnant with Thiago. The relationship between Carlos and Yarah was to last a number of months, perhaps one year. They separated at a time when Yarah was expecting their child, Luiz, who was born some 7 months after Thiago in 2001. Again Carlos attended the hospital in which Luiz was born and he also visited Yarah and his son after they returned to Yarah's mother's house. Carlos was present at Luiz's christening and he provided support by way of purchasing groceries. I consider that in the initial period after the birth of Luiz, Carlos had rather more contact with Luiz than he had had with Thiago and provided marginally more by way of financial support. He has maintained some contact with Yarah after he moved to Ireland, though the degree of contact is overstated by Carlos.

### **Luiz**

[56] Prior to October 2006 Luiz's main attachment figures were Yarah and Gabriela. On the 4 October 2006 he had to adapt to new and strange surroundings when he was brought from Brazil to Northern Ireland. He left a city environment in Brazil with a father with whom he had never lived to travel to a rural environment in Northern Ireland. He had only met Roisin for a few days one year before leaving Brazil and had not spoken to her throughout the period September 2005 - October 2006. He experienced significant loss when he left his biological mother and maternal grandmother. As soon as he arrived in Northern Ireland he started in a local primary school not knowing any English. He initially found it difficult to make friends in that school and was the object of adverse attention from his peer group. He has shown resilience and over a period of some 2½ years he has learnt



English to the extent that Mrs Penman, Solicitor in the Official Solicitor's Office. when interviewing him considered that he was fluent but perhaps less aware of the subtleties of language than others of his age. He has progressed well at school actively participating in school events. He has formed friendships. In short he has adapted to a different language, a different culture and formed attachments.

[57] Luiz is presently extremely confident and communicative. He has integrated well into his school. He has a considerable number of friends about whom he is extremely enthusiastic. He is a happy child. He has learnt English. He has retained Portuguese. He is learning Spanish. He has recovered from the psychological disturbance involved in his move in October 2006 from Brazil to Northern Ireland. He remembers very little about Yarah and Alessandra although he recognises their pictures. He has very little memory of Brazil and the memories he has lack detail.

[58] Luiz is outgoing and this is of significance when considering the effect on him if he was to live in Northern Ireland with Roisin in what would be a single parent household. I consider that his character would compensate for any isolation that might occur in such a situation and that he would seek out and form friendships. That Roisin would continue to encourage him to do so.

[59] Since October 2006 Roisin has been overwhelmingly responsible for Luiz's social, emotional, educational and physical care needs and has been Luiz's main carer. She enjoys caring for Luiz. She is now his main attachment figure and carer. She has provided a high level of care for him for instance by supporting him in his school, learning a basic level of Portuguese and cooking Brazilian food. She has provided for his needs at the basic level of feeding, nurturing, comforting and loving. She has also provided a more sophisticated level of support entirely appropriate for his age. On a day to day basis from 4 October 2006 and for some 2 years and 8 months, she has fulfilled Luiz's psychological needs for a parent through interaction, companionship, interplay and mutuality.

[60] Carlos had extremely limited involvement in Luiz's life prior to October 2006. Since then they have resided in the same house and initially their relationship was a good one. However for significant periods since October 2006 Carlos has had limited involvement in Luiz's needs and accordingly Luiz's attachment to him has been weakened. This lack of attachment is in part a reflection of the lack of commitment shown by Carlos over a number of years and his continuing lack of commitment in day to day tasks. I accept Dr McCartan's assessment that Roisin has been "singularly" responsible for Luiz's social, emotional, educational and physical care needs. I conclude that prior to 4 October 2006 Carlos in effect ignored Luiz's needs and since then has disregarded them. I consider that he will continue to do so if Luiz returns to Brazil. Roisin has a good track record in relation to Luiz.

Carlos does not. I do not consider that there will be any change in the future in respect of either Roisin or Carlos in that respect.

[61] As I have indicated Luiz experienced significant loss in October 2006 when he left his biological mother and maternal grandmother. He has now developed a bond to Roisin. The loss of Roisin if Luiz were to return to Brazil will trigger a reaction which will be greater than that experienced when Luiz moved to Northern Ireland. However he will be able to transfer his attachments to his biological mother (if she were available), his father (if he remained available), and his paternal grandmother (if she remains in Brazil). The move would require sensitive care.

### **Yarah**

[62] Yarah gave evidence via a webcam link from Brazil. She gave an account to Dr Denise McCartan, chartered clinical psychologist, of Luiz's early years. She has worked as a manicurist. She is healthy. I have set out her family relationships and my conclusions as to her reliability.

[63] Yarah states that despite the move to the farm outside City D she would be able to travel to City C every two weeks at the weekend for contact with Luiz if he returned to Brazil. If the journey was by bus that would mean a five hour journey there and also back every second weekend for Yarah and her two young daughters. Aaron would be deprived of his family life during those weekends. There will be financial implications. I do not consider that such contact will be permitted by Aaron or will occur. I consider that the move from City C to the farm outside City D will mean that Luiz, if he returned to Brazil, would have very little contact with Yarah and his maternal half siblings.

### **The emotional consequences for Luiz if he returned to Brazil**

[64] Dr McCartan states and I accept that if Luiz moves to Brazil and is removed from his main attachment figure, Roisin, he will experience emotional and behavioural difficulties, indicated by behavioural problems. Luiz's sense of immediate loss will be significant and a period of grief is likely to follow. The emotions will ignite previous emotions experienced when he left Yarah and Gabriella and accordingly are likely to be significantly greater than those experienced when he moved to Northern Ireland. The most significant influence is likely to be on Luiz's already fragile self-esteem. Poor self esteem can impact on functioning in social, emotional, educational and occupational situations. The long term outcome will depend on the behaviour of his future carers and their ability to be sensitive to Luiz's needs. A crucial component is the ability, either individually or collectively in whatever combination, of Carlos, Yarah and Alessandra being sensitive to and administering to Luiz's needs if he was to return to Brazil.

[65] I consider that Carlos has not in the past demonstrated sensitivity to Luiz's emotional needs either at an informed or instinctive level. I consider having seen him in the witness box that he still does not appreciate the need for sensitive handling of a transition to Brazil.

[66] Yarah agreed to Luiz moving to Northern Ireland on 4 October 2006 and at that stage did not give proper consideration to the emotional impact on Luiz of losing his then main attachment figures that is her and her mother Gabriela. She also did not consider the impact on Luiz of moving to Northern Ireland with a father whom he barely knew and a step mother whom in practical terms he did not know. Dr McCartan expresses concerns that Yarah may not understand the potential long term consequence of removing Luiz from his main attachment figure for a second time, that is from Roisin. Yarah is now physically unable to provide sensitive day to day handling of the transition to Brazil in view of her move to the farm outside city D. I also consider that Yarah has not learnt from her previous insensitivity in allowing Luiz to come to Northern Ireland in October 2006 and that even if present in City C that she would be unable to handle the transfer sensitively.

[67] I have also come to a similar conclusion about Alessandra. She also had a lack of insight into the impact on Luiz of his move in October 2006 to Northern Ireland. Having seen and listened to her I do not accept that either at an informed or instinctive level she would be able to deal sensitively with Luiz's return to Brazil.

### **The emotional consequences for Luiz if he remains in Northern Ireland**

[68] Dr McCartan states, and I accept, that Luiz will not suffer any psychological harm by no longer living with Carlos. She also states and I accept that any psychological disturbance likely to occur to Luiz no longer living with his mother and extended family in Brazil would have occurred when he first left Brazil. I bear in mind that it is important not only to consider the immediate effects but also the long term effects and in that respect I bear in mind the contact arrangements that can be made for Luiz's benefit if he was to remain in Northern Ireland.

### **Sequence of events**

[69] In 1992 Roisin, now 32, then 16, left school without qualifications. Thereafter she went to a technical college obtaining qualifications in child care and also computers and design. From 1993 to 2006 she was consistently employed in various jobs with approximately 10 different employers.

[70] In 1995 or 1996 Carlos, now 28, left school at the age of 15 or 16 with no qualifications in order to commence employment. He also has had a number of different employers and worked for a time as a machine operator in Brazil.

[71] In 1999 Carlos, then 19, commenced a relationship with Iara, then 17 or 18, which was to last approximately 1 year. The relationship came to an end in 2000 before Carlos knew that Iara was expecting their child, Thiago, who was born in January 2001.

[72] In 2000 Carlos started a relationship with Yarah who was then at school aged 16 or perhaps just 17. This relationship was to last a number of months, perhaps one year. They separated at a time when Yarah was expecting their child Luiz who was born some 7 months after Thiago in 2001. Again Carlos attended the hospital in which Luiz was born and he also visited Yarah and his son after they returned to Yarah's mother's house. Carlos was present at Luiz's christening and he provided support by way of purchasing groceries.

[73] Some 3 months after the end of the relationship between Carlos and Yarah, Carlos commenced a new relationship with Larissa.

[74] In 2001 Carlos' stepfather, Aja, left Brazil in order to work in the Republic of Ireland as an operative in a meat processing plant. Carlos' mother remained in Brazil.

[75] At the end of 2002, approximately 16 months after Luiz's birth, Carlos travelled to the Republic of Ireland to stay with his stepfather, Aja, for a 3 week holiday. Carlos informed both Yarah and Iara that he was going to be in Ireland for 3 weeks but when he arrived he changed his mind obtaining employment in the same locality as his stepfather.

[76] In January 2003 Carlos' mother, Alessandra, left Brazil in order to join Aja, in the Republic of Ireland and to work in a hotel. She stayed in the Republic until November 2005. She returned in March 2006 and then both she and Aja returned to Brazil in October 2007. I consider that this pattern as economic migrants could be repeated in the future.

[77] In 2003 Carlos moved from the Republic of Ireland to Northern Ireland and in April 2003 both he and Roisin were working in the same factory in Northern Ireland. A relationship commenced. Carlos told Roisin that he had two children in Brazil, Thiago and Luiz. There is a dispute as to the amount of financial assistance that Carlos provided for Luiz. Carlos states that throughout the period that he has known Roisin, and whilst Luiz was in Brazil he provided financial assistance to him. I reject Carlos' evidence. The first financial assistance for Luiz was provided when it was requested in relation to an eye infection in 2005.

[78] In January 2004 Carlos and Roisin married. They have since lived together in Roisin's house. Carlos is a Brazilian national whose only claim to remain in the United Kingdom is as a family member of, Roisin, a European Economic Area national who is residing in the United Kingdom. If Carlos wishes to stay in the United Kingdom without Roisin then he would have to qualify to remain in his own right under the current immigration rules. Carlos, despite his separation from Roisin and the divorce proceedings which she has now commenced, has applied for permanent residence in the United Kingdom. This was at odds with his stated intention of returning to and remaining in Brazil with Luiz. He stated that the reason for applying for permanent residence was to permit him to remain in the United Kingdom for these proceedings and on the basis that it would facilitate his return to Northern Ireland for his divorce proceedings. He did not need to return to Northern Ireland for his divorce proceedings and even if he did so, he would only require a visitor's visa.

[79] In April 2004 Carlos was diagnosed as suffering from epilepsy and he was commenced on medication. He was able to maintain his employment as a machine operative until he had a particularly bad seizure in March 2007 and as a result fell down a flight of stairs in a local restaurant. He was then certified as unfit for work and there was a period when his medication was altered and Carlos required observation on a full time basis in case of an adverse reaction. Roisin was for a time Carlos' full time carer. The present position is that Carlos has three or four major seizures each year and this has serious implications in relation to his ability to work with machines or at heights. The range of potential employment open to him is restricted by his physical condition but also by the effect of "a badge" of disability. His epilepsy, once stabilised, was not the only reason why he was absent from work. He suffered from a moderate degree of depression. The scope and range of Carlos' future employability is affected by epilepsy and by his depression. However he has some future wage earning capacity. I consider that he will be able to secure an income in Brazil upon his return to that country though employment will be harder to come by and I do not consider that it is likely to be steady employment. Roisin states that Carlos has a serious medical condition. That is correct. However she goes on to state that in all likelihood it "will go untreated in Brazil rendering him unfit for any employment and incapable of looking after the needs of a 7 year old child". I reject that part of her evidence. There is a free health care service in Brazil. Carlos' epilepsy will be treated in Brazil.

[80] In 2005 Luiz suffered from an eye condition. Roisin and Carlos were contacted by Alessandra with a request that money should be sent to Gabriela. Private medical treatment is quicker than the free health service in Brazil and it was for that reason that the money was requested. Roisin and Carlos sent a relatively modest amount of money to Gabriela in Brazil to pay

for private treatment. Roisin states that they were told by Alessandra that Luiz was “very ill and had a serious eye complaint”. Carlos states that the eye condition was not serious. The amount of money that was sent and the fact that it was only sent for this purpose on one occasion, would lead me to accept that the eye condition, an infection, was not as serious as Roisin suggested.

[81] In September 2005 Carlos and Roisin had a late honeymoon for 3 weeks in Brazil. They stayed with Aja and Alessandra both of whom were also in Brazil on holiday from their work in the Republic of Ireland. Carlos and Roisin also stayed for a few days in a hotel in a resort area of Brazil. They saw Luiz in Gabriela’s house and Luiz then joined them for 2 out of the 3 weeks including the time spent in the hotel. I have seen two photographs of Luiz on that holiday. He appears to be happy. There is a conflict of evidence as to the conditions in which Luiz was living in Brazil and the affect of those conditions on him. I have resolved that conflict by preferring the evidence of Carlos.

[82] After Carlos and Roisin returned to Northern Ireland discussions occurred as to whether Luiz should live with them in Northern Ireland. It was agreed between them that when Carlos went to Brazil in August/September 2006 that he would bring Luiz back to Northern Ireland with him to live with them.

[83] Carlos travelled to Brazil in September 2006. He agreed with Yarah that he would bring Luiz to Northern Ireland. I reject their evidence that they agreed that this was to be on a temporary basis limited in duration for a period of some three years. Even if Carlos and Yarah had agreed that Luiz would only be in Northern Ireland for a period of some 3 years that agreement would not bind the court. The test is welfare. Such an agreement could be evidence supporting, for instance, the proposition that Yarah was not indifferent as to whether Luiz remained in Northern Ireland for the rest of his life. That she wished to have him back in Brazil either with her or in close proximity to her and her other children. I consider that Yarah was concerned about Luiz’s welfare when she entered into the agreement that he could move to Northern Ireland. However she was motivated by her own inability to care for Luiz and by her own personal circumstances. In effect she anticipated in September 2006 that this would be a permanent move unless at some future stage Carlos and Roisin were themselves to move to Brazil.

[84] On 4 October 2006 Carlos brought Luiz back with him to Northern Ireland.

[85] At a time when Luiz was struggling in Northern Ireland and in December 2006 Carlos returned to Brazil for 2 weeks leaving Luiz with Roisin who at that stage was a person whom Luiz had only known for a couple of

months. The move from Brazil to Northern Ireland was a major event in Luiz's life and this was the very moment when he required his father's assistance and presence. The decision by Carlos to leave for Brazil in such circumstances is entirely consistent with his character.

[86] In the Summer of 2007 Carlos visited his mother, Alessandra, and stepfather, Aja, in the Republic of Ireland leaving Luiz with Roisin in Northern Ireland. In the latter part of 2007 Carlos was away on a number of trips including a trip to Brazil again leaving Luiz with Roisin.

[87] The relationship between Carlos and Roisin deteriorated through the early part of 2008. In the summer of 2008 they separated for a period of 2 months between 5 June 2008 and 1 August 2008. Carlos and Luiz spent those two months in the Republic of Ireland with Brazilian friends. In August 2008 Carlos and Roisin reconciled and Carlos and Luiz returned to Roisin's house in Northern Ireland. Luiz returned to school in September 2008.

[88] The relationship between Carlos and Roisin again deteriorated. A letter dated 23 February 2009 from a fertility centre to Roisin gave her an appointment for early March 2009. She was also informed that her husband must accompany her to the appointment. This prompted an altercation between Carlos and Roisin. It was suggested to Roisin during the course of cross examination that she tore up the letter and threw it in the bin. The next day Roisin produced the original letter. This is another example of the inaccuracies in the evidence of Carlos. I reject the evidence of Carlos that this letter prompted Roisin to say that she was no longer going to attempt to have a baby of her own but instead she said "I am going to try and take Luiz off you".

### **Article 3 (3) of the Children (Northern Ireland) Order 1995**

[89] I do not intend to repeat all the factual findings that I have made when giving consideration to the individual matters set out in Article 3 (3) of the Children (Northern Ireland) Order 1995 but rather I summarise my reasons and incorporate those findings to which I have not specifically referred.

#### **(a) Wishes and feelings of Luiz**

[90] Luiz has been interviewed by Mrs Penman, Solicitor in the Official Solicitor's Office on two occasions. On the first occasion he had limited memories of his time in Brazil saying that he was sad when he came to Northern Ireland leaving his mother and (half) sister (who was then just 9 months) and grandparents in Brazil but going on to say:-

“I don’t feel sad now in Northern Ireland because I have loads of toys and Playstation. In Brazil I only had one truck and I had nothing to do”.

[91] It is clear from what he told Mrs Penman that he is not speaking to his father and is distrustful of him. He said that he did not want to go back to Brazil and that he thought his father was trying to trick him into going back and will then just leave him there. He stated that he had a better life in Northern Ireland than in Brazil. That he likes his school and the friends he has made inside and outside of school. It was clear to Mrs Penman that Luiz wants to remain in Northern Ireland with his stepmother whom he considers is better to him than his “real mum” and “real dad”.

[92] On the second occasion that Mrs Penman interviewed Luiz he stated that he is still happy to live in the house with his stepmother instead of going back to Brazil. That he did not like living with his father without his stepmother because his father shouts at him. Luiz is of the view that his father doesn’t do anything good for him. Luiz wants to stay in Northern Ireland with or without his father. He does not want to go back to Brazil. Luiz was very distressed when Mrs Penman explained in a child friendly way what she thought was in his best interest and that was to return to Brazil.

[93] In deciding the weight to attach to Luiz’s wishes and feelings I take into account his age and his understanding. I also consider whether his views have been adversely influenced by others. I consider that in some respects they have been so influenced by Roisin.

[94] Luiz places emphasis on material aspects of his life in Northern Ireland which is understandable given his age and his family’s modest circumstances in Brazil. He values some of the material aspects, toys, the enjoyment of which are entirely temporary over, for instance, the potential for life long relationships with his half siblings in Brazil, of which he is dismissive. I consider that he has some idea of “economic migrancy” acquired through general discussion in the house. His paternal grandmother and step-grandfather worked in the Republic of Ireland. His father stayed in Ireland to obtain employment. Thiago’s mother is working in Portugal. The financial circumstances in Brazil of his mother’s family, who have not left Brazil, are worse than those of his paternal grandparents. He understands that there are financial advantages if he remains in Northern Ireland but he has no ability to weigh those against the ties of family, culture and language in Brazil which he considers are unimportant. He is unable to appreciate the advantage of his father being able to speak to him in his own language and how that will facilitate him in keeping in touch with his family in Brazil. There are certain aspects of his wishes and feelings which carry no weight. However his enjoyment of and confidence in his relationship with his step-mother and his



attachment to her is important to him. As are the friendships that he has formed in Northern Ireland.

[95] Insofar as his wishes are presently adversely influenced by his feelings towards his father I consider that in part is as a result of his father's lack of involvement in his life before October 2006 and the lack of any sustained commitment by his father since then. Also it is a reflection of his reaction to the ill-will and rancour that is presently being experienced by all those living together in Roisin's house in Northern Ireland. Insofar as those feelings are a reflection of his father's lack of involvement in his life in the past I do not consider that Luiz, given his age, will be able to consider and weigh the potential for his father's involvement in the future and the potential for the growing importance of Carlos as a father figure. Insofar as they are a reflection of the present ill will and rancour I do not consider that Luiz is able to discount such temporary emotions.

[96] In conclusion I have regard to Luiz's wishes and feelings but I am wary of giving undue weight to them in view of Luiz's age, maturity and the matters which I have set out.

#### **(b) Luiz's physical, emotional and educational needs**

[97] Luiz's most basic physical needs are for food and accommodation. I am not influenced by the respective material standards of the accommodation in Northern Ireland in comparison with Brazil as a child may be perfectly happy in more modest surroundings: different degrees of affluence are not in this case synonymous with happiness. I have found that Luiz was properly nourished in Brazil prior to October 2006 and I am confident that he will be if he returns to Brazil. The same applies in Northern Ireland. Luiz's accommodation in Northern Ireland is satisfactory. So much can also be said about his proposed immediate accommodation in Brazil in that it is Carlos' intention that he lives with Luiz's paternal grandparents.

[98] Luiz's emotional needs include his need for love, care and emotional support. Luiz's present primary attachment figure is Roisin and I consider that preservation of that bond is a significant factor. She has been able to provide a high level of support and she is Luiz's social and psychological parent. In the longer term if Luiz remains in Northern Ireland there will be an absence of a father figure and I have taken that factor into account. Yarah is unable to admit Luiz to her most intimate and immediate family circle at the instigation of Aaron. She will no longer be physically close to Luiz if he returned to Brazil. She will be unable to maintain contact with Luiz even if he was in Brazil. She agreed in 2006 to Luiz leaving Brazil for Northern Ireland without any limit on how long he would be in Northern Ireland. She has told Roisin that she consider that Roisin is best placed to care for Luiz. Carlos has played little role in Luiz's life and I have found that this will continue in the

future if Luiz was to return to Brazil. Carlos presently has minimal involvement in Luiz's education, social life and medical care. I do not consider that Carlos' contribution will increase as Luiz gets older. Luiz presently has little attachment to his father to the extent that he will not suffer any psychological harm if he no longer lives with Carlos. I have accepted that Carlos stated and meant that he did not care what happened to Luiz in the future as long as Roisin did not have him. The love and commitment of the extended families in Brazil has the potential to offer the opportunity for life long and fulfilling relationships but in the particular circumstance of this case that has to be kept in proportion and balanced with the contact arrangements that I find will be implemented by Roisin if Luiz is to remain in Northern Ireland. I consider that Luiz will be able to maintain meaningful direct and indirect contact with his Brazilian family. I consider that in the context of the contact arrangements that will be put in place Luiz's needs for love, care and emotional support will be better met by Roisin.

[99] There is another aspect of Luiz's emotional needs and that is his need for cultural identity. If Luiz is to remain in Northern Ireland he will lose the experience of growing up within the culture of his biological parents. Only by immersion into a culture can Luiz really understand and assimilate it. There will be a long term loss if Luiz does not return to Brazil which can only in part be remediated by steps such as the cooking of Brazilian food, the use by Roisin of the basic level of Portuguese which she has acquired, the celebration of Brazilian holidays or special days and other such activities such as following the Brazilian football team. That loss of immersion in a culture has to be seen in the context of the contact arrangements proposed in this case and also balanced against the clear emotional advantage of growing up with Roisin with her clear commitment and the love that she will lavish on him.

[100] In respect of his educational needs if Luiz remains in Northern Ireland he will continue to have access to a high level of education. I am satisfied that in Northern Ireland Roisin would encourage and support him in that respect. There is a place available for Luiz in a local school in close proximity to his paternal grandparent's house in Brazil. Carlos has been leaving the encouragement and support of the Luiz's education to Roisin but I do not consider that Carlos would equally support and encourage him in that respect in Brazil if Carlos and Luiz were to return to Brazil. Also how Luiz progresses educationally will depend in some measure on how secure and confident he is in his placement and on whether any transition to Brazil would be handled sensitively. I consider that he will be more secure and confident in Northern Ireland with Roisin and I have held that the transfer to Brazil would not be handled sensitively.

**(c) The likely effect on Luiz of any change in his circumstances**

[101] If Luiz returns to Brazil his response in the short term is likely to resemble a grief reaction and this response is likely to be significantly greater than that experienced by him when he came to Northern Ireland in October 2006. I have concluded that this transition will not be dealt with sensitively. I consider that this will result in a major adverse effect on Luiz with a very real risk of adverse long term consequences.

[102] If Luiz remains in Northern Ireland there is no short term consequence and any adverse consequences have to be seen in the context of the contact arrangements that will be maintained for him by Roisin.

**(d) Luiz's age, sex, background and any characteristics of his which the court considers relevant**

[103] Luiz is approaching 8 years of age and is male. His national and racial characteristics are evident. He is a Brazilian child of Brazilian parents. His cultural and national heritage is likely to be important to him in the future and this can in part be met by the steps put in place by Roisin and by maintaining contact with his family in Brazil. He is extremely confident and communicative.

**(e) Any harm which Luiz has suffered or is at risk of suffering**

[104] Luiz suffered harm when he was brought to Northern Ireland in October 2006. He is presently experiencing harm as a result of the breakdown of the marriage between Carlos and Roisin. He will suffer harm on a return to Brazil with a very real risk of adverse long term consequences. He will suffer harm remaining in Northern Ireland. I consider that the least harm will be occasioned if he remains in Northern Ireland with Roisin.

**(f) How capable of meeting Luiz's needs are Roisin, Carlos, Yarah and members of the extended families in Brazil and Northern Ireland**

[105] Roisin has demonstrated her abilities to meet Luiz's needs. He has developed well with her and I consider that she is capable of meeting his short and long term needs. I do not consider that Yarah or Carlos is able to meet his emotional needs either on their own or in combination with their extended families.

[106] I have also been asked to consider the impact, if any, of the immigration status of Luiz on Roisin's capacity to meet his needs. The first report from the Official Solicitor in this case states that "It is not clear from the papers whether or not (Luiz) has only a right to be (in the United Kingdom) because his father is here and married to a European economic area national". Whilst Carlos and Roisin are married Luiz clearly has a right

to remain in the United Kingdom by virtue of regulation 7 of the European Economic Area Immigration Rules 2006 which provides that a direct descendant of a spouse of an economic area national shall be treated as a family member of that national. What is the position when the marriage between Carlos and Roisin comes to an end? Could Luiz be required to leave Northern Ireland due to his immigration status? If on the balance of probabilities Luiz would be removed from the United Kingdom then is that a factor which the court should take into account in deciding what is in the best interests of Luiz?

[107] Mumby J in *Re A (Care Proceedings): Asylum Seekers* [2003] 2 FLR 921 considered the functions of the court under the Children Act 1989 and of the Secretary of State under the Immigration Act 1971. The court in exercising its power under the Children (Northern Ireland) Order 1995 must be guided by the best interests of the child. If in this case I was of the view, on the balance of probabilities, that Luiz was going to be deported by the Secretary of State then that would be a factor to be taken into account in considering what was in his best interests. That is not this case. Factually I am not satisfied that if I decided that Luiz was to remain in Northern Ireland with Roisin that the Secretary of State after considering the Article 8 rights of both Roisin and Luiz would order deportation. Accordingly I do not consider this to be a factor to be taken into account in this case and all counsel in the case agreed with this proposition.

### **Conclusion**

[108] I consider that it is in Luiz's best interests to remain in Northern Ireland with Roisin. I make a residence order in favour of Roisin and a prohibited steps order.

### **Contact**

[109] In arriving at that decision I also have had regard, in accordance with Article 3 (3) (g) of the Children (Northern Ireland) Order 1995, to the power under Article 8 of that Order to make a contact order in favour of Carlos and Yarah. Both Roisin and Carlos have agreed the basis upon which contact should take place in the event that it was decided that Luiz should remain in Northern Ireland. The agreement is between Roisin and Carlos but it should be adapted to include Yarah. I set out the agreement as to contact:

1. Contact by telephone and webcam once per week;
2. Additional telephone contact on Luiz's birthday, Carlos' birthday and at Christmas;
3. Carlos will return to Northern Ireland once per year for 3 weeks in either July or August and during this time Luiz will stay with Carlos

4. Roisin will bring Luiz to Brazil once per year for 2 weeks at either Christmas or Easter during which time Luiz will stay with his father and paternal grandparents; Roisin and Carlos will each pay 50% of the cost of Luiz's plane ticket.
5. Luiz can write letters to Carlos which Roisin will send; Luiz and Carlos can also send birthday cards to each other (Roisin will send birthday cards to Carlos from Luiz);
6. Such further and/or additional contact as can be agreed between the parties.

[110] I will hear counsel in relation to the exact terms of the contact order to include contact with Yarah. In so far as the agreement between the parties imposes conditions on both Roisin and Carlos, for instance as to who should pay for the cost of Luiz's annual plane ticket, I will impose those conditions under Article 11 (7) of the Children (Northern Ireland) Order 1995.

### **The Future for Contact**

[111] Now that the decision has been taken, I would emphasise the constructive role that Carlos and Yarah can play in the future, the benefits that they can bring to Luiz and the fulfilment that they can obtain from playing a very active and important part in Luiz's life. Carlos and Yarah have much to contribute through ongoing positive contact with Luiz, by which I mean contact that acknowledges and supports his placement in Northern Ireland, rather than contact that seeks to undermine it. Supporting his placement involves Carlos and Yarah positively validating the placement to Luiz and re assuring him that he will be happy and secure in it. Roisin for her part has also to reassure Luiz that she positively encourages and supports contact with Carlos and Yarah, reassuring him that it is a good and positive aspect of his life to love them both. Roisin has also to reassure Carlos and Yarah that she appreciates all the positive benefits that they can bring to Luiz. Both Roisin and Carlos have to approach the task of promoting contact with good will, patience and understanding. Particularly an understanding that Luiz did not create the position in which he now finds himself. It is now for the adults who made the decisions in October 2006 to bring goodwill, a softening of their attitudes and forbearance in their dealings between them for Luiz's benefit.

[112] I may also say that this case has involved some harsh accusations and counter accusations which it has been necessary for me to determine. The legal process has been particularly emotionally draining for Roisin, Carlos and Yarah. It has played a constructive role in providing them with an opportunity to be informed as to Luiz's needs. However it should not be viewed as a personal victory or a personal defeat for any of them. If any of

them views it in those terms then they have failed to understand that it is the welfare of Luiz that is important and is the paramount consideration. His welfare requires forbearance between them not continuing accusations and recriminations.