

*Delgado v. Osuna*

Issues concerning the plight of refugees, seekers of political asylum, cross-border migration, and families fleeing dangerous homes in dangerous regions, have all become depressingly familiar in the everyday media. Immigration reform, rights of undocumented aliens, open or closed borders, and vetting of refugees, have all become a toxic and controversial political issue.

Not surprising, against this background, that a family fleeing unstable Venezuela for the United States would become the subject of a Hague Convention dispute from the 5th Circuit. The facts are complex but, in sum, Dr. and Osuna Delgado left a dangerous situation in Venezuela with their four and seven year old sons to travel to the United States on a six-month tourist visa. Osuna and the children applied for asylum status. Testimony differed on whether Mom and the two children intended to return to Venezuela; mom said they intended not to return, Dr. Delgado reported the reverse. When he couldn't get a medical license in the U.S. to practice urology without lengthy training, he returned to Venezuela, then requested Osuna and the two children return as well. When she refused, he filed this Hague proceeding in the Texas District Court.

We have learned that Hague Convention cases are intensely fact specific [2012 Cal.Fam.Law Monthly (November 2012) 350]. We also know that the Convention does not define "habitual residence" of children, which was the primary issue in this case. Determination of "habitual residence" is a mixed question of law and fact. The District Court found that the parties "last shared intent...regarding their future was that they would leave their habitual residence, Venezuela, and would not return." The 5th Circuit affirmed the District Court holding that Dr. Delgado did not meet his burden to show that the children were wrongfully removed from Venezuela or retained in the United States, because Venezuela was abandoned by the conduct of the parties as the children's habitual residence.

With an increasingly transient society, cross-border jurisdictional disputes can be expected to increase. Documentation and preservation of the intent of relocating parents becomes even more crucial in the international context of these type of Hague Convention issues.

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