

VISA PAK ISSUE 402 — 24 MAY 2019

## **CUSTODY OF FILIPINO CHILDREN UNDER THE AGE OF 16 YEARS**

This advice to staff supplements advice contained in Visa Pak issue 100 to the extent it relates to Filipino applicants.

Immigration instruction E4.1.15(b) requires either one or both parts of this instruction to be met. The first part is “evidence of the right to remove the child from its country of residence, or from the country in which rights of custody or visitation have been granted includes, but is not limited to, legal documents showing that the applicant or accompanying parent has sole custody of the child, and the other parent has no visitation rights”. The second part of this instruction is “a signed statement from the other parent, witnessed in accordance with local practice or law, agreeing to allow the child to remain in New Zealand for their period of intended stay if their entry is approved”.

### **The Philippines**

Under local Philippine law, specifically the Family Code of the Philippines, a court order is the only acceptable document to transfer the custody and parental rights of a child. Thus, in accordance with Philippine law, a parent cannot transfer or renounce the parental authority of a minor child by mere execution of an affidavit.

However, local law does not supersede the requirements of immigration instructions. Immigration Officers (IOs) should consider the sufficiency of supporting evidence against instructions rather than assessing its application against local law. As such, if the parents do not have legal documents that establish custody, i.e., court order, then the custody arrangements or consent to such removal should be detailed in the signed statement from the other parent. This means that an affidavit that is signed and witnessed in accordance with local law, and specifically agrees to allow the child to remain in New Zealand for their period of intended stay if their entry is approved, would satisfy the second part of E4.1.15 (b).

Please note, that the application of residence instructions does not translate entirely to temporary instructions as the requirements of these instructions are not exactly the same.

### **The Process**

When assessing evidence of the “right to remove”, please note that this should be subject to verification. The Manila Office has developed a custody matrix to serve as guidance when requesting evidence of the “right to remove” for temporary visa applications. The custody matrix is attached below.

Please note that this advice is not intended to be an in-depth processing guide for each application with custody related concerns. IOs should assess each application on a case by case basis, and if deemed necessary, seek legal advice before deciding an application with custody related issues.

## CUSTODY MATRIX

Situations		Types of evidence of right to remove
Parents married	Other parent not travelling <sup>1</sup>	Signed statement witnessed in accordance with local practice or law <sup>2</sup>
	Separated	Legal documents <sup>3</sup> and/or signed statement witnessed in accordance with local practice or law
	Marriage annulled, custody settled.	Legal documents and/or signed statement witnessed in accordance with local practice or law
	Marriage annulled, custody not settled.	Legal documents and/or signed statement witnessed in accordance with local practice or law
	Abandoned by one parent	Legal documents and/or signed statement witnessed in accordance with local practice or law
Parents not married	Father in New Zealand	Legal documents and/or signed statement witnessed in accordance with local practice or law
	Mother in New Zealand	No document required. Child(ren) born to unmarried parents shall be under the parental authority of their mother.
	Abandoned by father	No document required. Child(ren) born to unmarried parents shall be under the parental authority of their mother.
	Abandoned by mother	Legal documents and/or signed statement witnessed in accordance with local practice or law

<sup>1</sup> Other parent not travelling due to Not ASH assessment on health, employment commitments, etc., but have an intention to eventually join the applicant and NZ partner.

<sup>2</sup> Examples of signed statement witnessed in accordance with local practice or law include an affidavit, travel consent, etc.

<sup>3</sup> Examples of legal documents include court order, annulment papers, etc.