

Re I (Adoption: Nationality) (1997)

[1998] 2 FLR 997

28/10/1997

Barristers

Robin Barda

Court

Family Division

Facts

It remained the law that an application which was no more than a device to defeat immigration control must fail and that in such a case considerations of welfare were for practical purposes irrelevant.

An application for the adoption of two children aged 16 and 13. The children were Indian nationals. The natural parents of the children had both consented to the adoption and the adoption was supported by the relevant local authority and the official solicitor on behalf of the children, but it was opposed by the secretary of state. The natural parents had parted and the sole care of the children was with the mother. She had health problems and difficulties of dealing with the children. The adoptive father was an older cousin of the children and had maintained a relationship with the children. The children had been in England for over a year and were presently in English schools and had been given leave by the secretary of state to remain until they had taken 'A' levels in respect of the elder child and GCSE's in respect of the younger one.

Held

HELD: (1) It remained the law that an application which was no more than a device to defeat immigration control must fail and that in such a case considerations of welfare were for practical purposes irrelevant. (2) Under *Re W (A Minor) (Adoption : Non-Patril)* (1985) 3 WLR 945 whilst the first consideration must be to promote the welfare of the child during childhood under s.6 Adoption Act 1976, that factor would carry less weight if there was only a short period of childhood remaining. (3) The court was satisfied that the application was not a sham to circumvent the immigration rules. There was a clear and substantial advantage for the children to remain apart from that of becoming a British citizen. The court was expressly required to have given consideration to the children's wishes which were, in the instant case, to remain in England. (4) In weighing the balance of all the circumstances of the case that of public policy had to be included. The particular circumstances of the case outweighed the public interest in the secretary's right to control immigration.

Adoption orders made.

Permission

Reproduced with kind permission from Lawtel 