

NN v ZZ & Ors [2013]

[2013] EWHC 2261 (Fam)

26/07/2013

Barristers

Teertha Gupta KC
Michael Edwards

Court

High Court (Family Division)

Practice Areas

International Children Law

Summary

Mr Justice Peter Jackson sets out principles as to how evidence from non-English speakers should be obtained.

Held

In the course of a fact finding involving a number of witnesses that were non-English speakers, concerns were raised as to how their evidence had been obtained. Mr Justice Peter Jackson provided the following principles on how to obtain evidence in such circumstances:

“(1) An affidavit or statement by a non-English-speaking witness must be prepared in the witness’s own language before being translated into English. This is implicit from Practice Direction 22A of the Family Procedure Rules 2010, paragraph 8.2.

(2) There must be clarity about the process by which a statement has been created. In all cases, the statement should contain an explanation of the process by which it has been taken: for example, face-to-face, over the telephone, by Skype or based on a document written in the witness’s own language.

(3) If a solicitor has been instructed by the litigant, s/he should be fully involved in the process and should not subcontract it to the client.

(4) If presented with a statement in English from a witness who cannot read or speak English, the solicitor should question its provenance and not simply use the document as a proof of evidence.

(5) The witness should be spoken to wherever possible, using an interpreter, and a draft statement should be prepared in the native language for them to read and sign. If the solicitor is fluent in the foreign language then it is permissible for him/her to act in the role of the interpreter. However, this must be made clear either within the body of the statement or in a separate affidavit.

(6) A litigant in person should where possible use a certified interpreter when preparing a witness statement.

(7) If the witness cannot read or write in their own native language, the interpreter must carefully read the statement to the witness in his/her own language and set this out in the translator's jurat or affidavit, using the words provided by Annexes 1 or 2 to the Practice Direction.

(8) Once the statement has been completed and signed in the native language, it should be translated by a certified translator who should then either sign a jurat confirming the translation or provide a short affidavit confirming that s/he has faithfully translated the statement.

(9) If a witness is to give live evidence either in person or by video-link, a copy of the original statement in the witness's own language and the English translation should be provided to them well in advance of the hearing.

(10) If a statement has been obtained and prepared abroad in compliance with the relevant country's laws, a certified translation of that statement must be filed together with the original document."

Permission

Family Law Week 