



Tip of the Month June 2010 Travelling Internationally with a Minor Child

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A common issue fielded by attorneys working with immigrant populations is how a single parent can travel outside of the country with a minor child. Concerns about child abduction have caused the government to create complicated procedures for single parents requesting passports for their children. Often one parent cannot obtain consent from the other parent to travel with the minor child as is typically required. When a minor child is involved, travelling outside the United States requires preparation to ensure an uneventful trip.

Custody of a minor child is relevant in two instances when applying for a passport and at the time of travel.

Applying For a Passport

In order to travel internationally every child must have a passport. To find detailed instructions on how to obtain a passport for a minor child who is a U.S. citizen go to http://travel.state.gov/passport/forms/ds11/ds11_842.html. In order to obtain a passport for a minor child, both parents must go with their child to apply and sign the DS-11 form in person or must meet one of the following exceptions:

- **If both parents consent although only one parent is available to go in person to apply**, the applying parent must bring the second parent's notarized Statement of Consent (Form DS-3053) <http://www.state.gov/documents/organization/80106.pdf>.
- **If only one parent is available and the other parent is unable to be located**, then the Statement of Consent or Special Circumstances: Issuance of a Passport to a Minor under Age 16 (Form DS-3053) allows a parent to explain why he or she was unable to locate the second parent. In the authors' experience, approval of these forms appears to be subjective and depends upon the individual reviewing the statement. Information that assists in the approval of the DS-3053 form includes:
 - Attempts made to contact the second parent;
 - Attempts made to contact the family members/friends of the second parent to locate the second parent;
 - The last contact and type of contact that was made with the second parent;
 - If the other parent was deported and therefore unreachable; and
 - If domestic abuse is a factor in why they are unable to locate or contact the other parent for consent (providing documentation is recommended).
- **For a parent with sole legal custody, he or she must bring one of the following:**
 - The minor's certified U.S. or foreign birth certificate listing only the applying parent's name;

- Court order granting sole custody to the applying parent (make sure the child's travel isn't restricted by that order);
- Adoption decree if it lists the applying parent as the sole adoptive parent;
- Court order permitting applying parent to travel with the child;
- Judicial declaration of incompetence of non-applying parent; or
- Death certificate of non-applying parent.

In the event the parent does not meet the above exceptions he or she must obtain a custody order from family court.

If the single parent is unable to locate the other parent because his or her whereabouts are unknown, the parent may petition for custody and obtain a court order stating the language in the Recognition of Parentage and Minn. Stat. § 257.541 regarding the mother having sole custody of the children until custody is determined in a separate proceeding. Such an order has typically allowed the single mother to apply for the minor's passport and travel internationally with the child. Often personal service is not possible in these cases; we recommend attempting service by mail before filing to demonstrate an effort to notify the other parent.

If the consent of the second parent is required, the location of the second parent is known and the second parent will not consent to the international travel with the minor child, the applying parent must make a motion for permission to travel with the child internationally and obtain a passport. Some relevant factors to consider when bringing or responding to this motion include:

- Is the destination country a member of the Hague Convention;
- How effective is the country's legal system in returning children if they are abducted;
- How will the parenting time that will be missed be compensated to the second parent;
- Are the objections raised by the second parent reasonable;
- Consider the best interests of the child factors as to whether the travel is appropriate;
- Other risks specific to the destination country;
- Past/current threats of taking the child permanently to the destination country, or in the alternative lack of threats;
- Efforts towards relocation by the travelling parent or in the alternative a showing that the travelling parent is settled in the community in the U.S.;
- Travel history of requesting parent and/or child;
- Dissatisfaction with life in the U.S.;
- Whether the travelling parent has documents from immigration; and
- Compliance with previous court orders.

Documentation Needed at the Time of Travel

At the time of travel, the travelling parent may have to prove custody of the minor child. It is recommended that the accompanying parent travel with the documents used to obtain a passport. Where there is an agreement between the parents, it is also recommended the travelling parent

obtain a notarized letter indicating that he or she received consent from the second parent to travel with the minor child internationally. The letter should contain the dates of departure and arrival as well as the destination. This letter may be helpful in the event it is requested while travelling. Finally, parents are encouraged to contact the airline or travel agent prior to travel for regulations pertaining to their destination country.