BARBADOS.[Unreported]IN THE SUPREME COURT OF JUDICATUREHIGH COURTFamily Division No. 215 of 1999BETWEEN: JULIET CASSANDRA HOLFORD Applicant/Wife AND ROGER STEPHEN HOLFORD Respondent/HusbandBefore The Honourable Madam Justice Elneth O. Kentish, Judge of the High Court in Chambers.2002: November 26Mrs. Beverley Walrond, Q.C., for the Applicant/Wife.Mr. Roger Forde and Miss Lana Edwards for the Respondent/Husband DECISION[1] In her application filed on 8th November, 2002 under a certificate of urgency the Applicant seeks the orders set out at paragraph 1 (a) (b) (c) and (d).(a) That the Applicant be at liberty to remove the minor children TAMEISHA ROCHELLE HOLFORD who was born on the 15th day of April, 1993 and TARYN JOSEE HOLFORD who was born on the 12th day of July, 1996 from Barbados for the purpose or residing with her abroad in Japan and then in the United States of America upon giving an undertaking to return the said children to this jurisdiction whenever called upon to do so by this Court;(b) That the Respondent do have such access to the children aforesaid for one-half of each summer vacation at his expense and for such other period as to the court may seem reasonable;(c) That the Respondent do continue to pay to the Applicant the sums ordered for the maintenance of the said children together with such other expenses as to the court may seem reasonable;(d) That the Respondent do hand over the children's passports with immediate effect.[2] The parties were divorced on 28th October, 1999 after a marriage of 12 years and both these parties have now remarried, the Applicant some months ago to Vincent Brooks, a Career United States Military person with over 20 years experience, currently based at the American Naval Base in Japan and the Respondent some two and a half years ago to Suzette Holford, now pregnant as is the applicant.[3] The Applicant who was granted care and control of the two children, both girls aged 9 and 6 respectively of the marriage on the dissolution of the marriage, now wishes to join her husband first in Japan where they intend to live for one year until the end of 2003 when they intend to take up residence permanently in the United States of America, and wishes to take both children with her.[4] In her affidavit filed on 8th November, 2002 in support of the application, the Applicant deposes that when she first discussed her plans to join her husband with the Respondent he raised no objection his concern being that the children "do not forget their old man". Accordingly she proceeded to make the necessary arrangements to place the children in a school in Japan and paid their school fees. [5] The Respondent admits that initially he had no objection to the children leaving the Island to reside with the Applicant and her husband on a permanent basis but states that he informed her that he wished to consider the matter further. Upon subsequently learning that the Applicant was going to live in Japan with her husband for one year before taking up permanent residence in the United States of America, the Respondent informed the Applicant first orally and then by letter dated 20th October, 2002 from his attorney-at-law that he had changed his position and would not consent to the removal of the children from Barbados. In the said letter the Respondent put forward alternative proposals with respect to the children including his intention to seek a variation of the Court's order so as to vest care and control of the children in the Respondent with reasonable access for the Applicant.[6] It is against this background that the present application comes before the Court, the urgency residing in the fact that the Applicant in view of her advanced pregnancy, must travel prior to December 31, 2002 if she is to be allowed to travel for long distances.[7] Before me, Counsel for the Respondent has conceded that if the Applicant was going to reside permanently in the United States of America with her husband, his client would have no objections but submitted that the transitional period of one year in Japan is undesirable and not in the best interest of the children.[8] Counsel for the Respondent also conceded that there is no great divide between - (i) the stability of the home environment and extensive family support system; and(ii) the physical accommodation which either the Respondent or the Applicant will provide for the children. Put broadly the Respondent's objection to the proposed removal of the children from Barbados is that it is not in the best interest and welfare of the children that the status quo should be changed and the children should not be uprooted at this stage from their familiar surroundings, education, family and friends to live in Japan, a new culture with climatic challenges, for one year before taking up permanent residence in the United States of America.[9] It is noteworthy that while the Respondent views the move to Japan as disruptive and undesirable, the Respondent himself advances a proposal which carries the same risk of disruption, that is, that the children be removed from the care and control of the Applicant whose fitness as a mother has not been challenged in any serious way and placed with his wife and himself for the interim period of one year and then returned to the care and control of the Applicant after she has settled in the United States of America. Who can determine the degree of emotional 'fall-out' for the children on the separation from a mother with whom they share such strong and undeniable bonds taking into account not only the closeness they now share with the Respondent but also the disappointment at being deprived of the excitement of travel and living in a new land? Further it does appear that the relationship between the children and the Respondent's wife is not friction free. It is submitted that as the Applicant and her husband have not lived together, they should first work out their lives for the year in Japan and when they establish a home in the United States of America, the Applicant can then resume care and control for the children.[10] Counsel for the Applicant, however, points to the fact that the Applicant is expecting a child and submits that undesirable sibling rivalry could result if the children are not living with the Applicant when the new baby arrives. There is much merit in this submission in view of the fact that the Respondent concedes that he has no objection to the children joining the Applicant when she takes up residence in the United States of America.[11] Counsel for the Respondent also submits that enough has not been said about the bona fides of the Applicant's husband in that there is no evidence before the Court of Applicant's husband being a fit and proper father. This submission cannot be taken seriously given the fact that the Respondent is and was prepared to allow the children to go the reside with the Applicant and her husband permanently.[12] In paragraph 16 of his affidavit filed on 25th November, 2002 the Respondent asks the Court to "grant him custody of his daughters, which will allow them to continue to reside in Barbados and enjoy the family support and nurturing that they have enjoyed all their lives." This is at variance with Counsel's submission that the removal of the children from Barbados should be deferred until the Applicant establishes a permanent home in the United States of America. And so the real question is whether the proposed removal of the children from Barbados by the Applicant is in their welfare and best interest?[13] Counsel for the Applicant has referred the Court to Re H 1998 C.L.R. at paragraph 2441 where it was held that there had to be a compelling reason to refuse a custodial parent's reasonable desire to live outside the jurisdiction.[14] The Respondent was prepared to allow the children to be removed from the jurisdiction to live with the Applicant and her husband permanently in the United States of America before he realized that there would be a year spent in Japan prior to relocation in the United States of America. It is therefdore reasonable to infer that the Respondent did not consider that the removal of the children from Barbados to live permanently in the United States of America not to be in their best interest or welfare.[15] However the Respondent considers that the interim year in Japan would be so disruptive for the many reasons put forward in his affidavit that the proposed removal is not in their welfare and best interest.[16] Having read the affidavits filed both in support of and in opposition to the application and having read Counsel's submissions for the Applicant and the Respondent's respectively, I am not satisfied for the following reasons that proposed removal would not be in the welfare and best interest of the children.(1) The Applicant will not be working and will be able to care for the children on a full time basis assisted by her mother until sometime after the birth of the baby.(2) The children are both quite young and in the words of the learned Trial Judge in Re Thain (an Infant) 1926 - Ch. 676 at 684 "...One knows from experience how mercifully transient are the effects of partings and other sorrows and how soon the novelty of fresh surroundings and new associations effaces the recollection of former days and kind friends..."(3) The proposal of the Respondent to assume care and control of the children itself carries the very risk of disruption of which the Respondent complains.(4) Although there is a good relationship between the children and the Respondent, it is very clear that the relationship between the Applicant and the children is very strong and deeply rooted; to break that closeness could be detrimental to the emotional well- being of the children.(5) Since it is envisaged that the Applicant and her husband will at some time provide a permanent

home for the children including the child now on its way, it is desirable that that family unit be established as soon as possible.(6) The move to Japan will doubtless disrupt to some extent the children's education. However such disruption can easily be compensated for and the advantages of an exposure to a foreign culture, and new experiences will no doubt enrich the lives of he children. The Applicant has had the care and control of the children since the divorce in 1998 and no compelling reason has been given to justify a variation in the original order of the Court vesting care and control in the Applicant.[17] Accordingly it is ordered that the Applicant be at liberty to remove the children from the jurisdiction to reside with her abroad. It is also ordered that Respondent deliver to the Applicant the passports of the children forthwith.[18] The Respondent is properly concerned about access to the children and the Applicant has stated that she is prepared to allow the children to spend part of their summer vacation and such other periods of vacation as may be reasonable with the Respondent in Barbados. Accordingly it is ordered that the Respondent do take access to the said children for one half of each summer vacation at his expense and for such other period as the parties may agree. [19] The Respondent is also concerned about the educational arrangements made for the children and the Applicant is hereby ordered to furnish to the Respondent in writing within 7 days details of all such arrangements with supporting documentation.[20] It is also ordered that the Respondent do continue to pay to the Applicant the sums ordered for maintenance of the said children.[21] No order as to costs.[22] Liberty to apply.Elneth O. Kentish,Judge of the High Court