



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment reserved on: 15.06.2026
Judgment delivered on: 17.06.2026

+ MAT.APP.(F.C.) 204/2026, CM APPL. 38759/2026 & CM APPL. 38760/2026

[REDACTED]

.....Appellant

versus

[REDACTED]

.....Respondent

Advocates who appeared in this case

For the Appellant : Ms. Priya Hingorani, Senior Advocate with Ms. Aditi Ladda, Advocate.

For the Respondent : Mr. Somnath Bharti and Ms. Kashish Aggarwal, Advocates.

CORAM:

HON'BLE MR. JUSTICE TEJAS KARIA

HON'BLE MS. JUSTICE MADHU JAIN

JUDGMENT

TEJAS KARIA, J

FACTUAL BACKGROUND:

1. The present Appeal has been preferred under Section 19 of the Family Courts Act, 1984, assailing the order dated 05.06.2026 (“**Impugned Order**”) passed in HMA No. 628/2025 by the learned Family Court-01 (“**Family Court**”), South-East District, Saket Courts, Delhi, whereby the Application filed by the Respondent under Section 26 of the Hindu Marriage Act, 1955 was allowed, permitting the minor child to be brought to India from the USA.



2. *Vide* order dated 12.06.2026 passed in the present Appeal, both the Appellant and the Respondent were directed to file their respective Affidavits placing on record the relevant facts concerning the visa status of the minor child. The said order further recorded that, although the Respondent may travel to the USA on 12.06.2026, he shall await further orders of this Court before bringing the minor child back to India.

3. In compliance with the directions contained in the order dated 12.06.2026, the Appellant as well as the Respondent have filed their respective affidavits setting out their positions with regard to the visa status of the minor child.

4. We heard learned Senior Counsel for the Appellant and learned Counsel for the Respondent at length on 15.06.2026 and perused the Affidavits.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

5. Learned Senior Counsel for the Appellant submitted that the learned Family Court failed to interact with the minor child so as to ascertain his wishes and preferences prior to passing the Impugned Order, despite the Appellant having specifically brought to the notice of the learned Family Court that the minor child had repeatedly expressed his unwillingness to travel to India during the summer vacation. It was submitted that the Impugned Order was passed without due consideration of the wishes and best interests of the minor child.

6. Learned Senior Counsel for the Appellant further submitted that the learned Family Court misdirected itself in relation to the issue concerning the citizenship of the minor child. It was contended that there had never



been any dispute regarding the citizenship or nationality of the minor child and that the concerns raised by the Appellant were confined solely to the child's immigration status and his re-entry into the USA during the pendency of the ongoing visa transition process.

7. It was further submitted that the minor child is presently residing in the USA on a dependent visa linked to the Appellant and that the child's immigration process is presently undergoing a transitional phase consequent upon the Appellant's selection under the H-1B FY 2027 CAP Programme. It was submitted that the Impugned Order failed to appreciate that any disruption during this transition period could directly affect the child's legal status, continuity of residence, and right to remain in the United States.

8. Learned Senior Counsel for the Appellant submitted that the learned Family Court disregarded the fact that the Appellant's H-1B petition process was ongoing and time-sensitive, and that the Appellant had specifically pleaded that the immigration process required strict compliance with applicable immigration requirements during the pendency of the process. It was submitted that the learned Family Court failed to appreciate that uncertainty regarding the immigration status of the custodial parent necessarily impacts the welfare and legal status of the dependent minor child.

9. Learned Senior Counsel for the Appellant submitted that the Appellant had relied upon authentic documents demonstrating the minor child's continuing immigration status and the potential consequences that may ensue if the child undertakes international travel prior to completion of the pending visa transition process. It was submitted that, despite such material having been placed on record, the learned Family Court failed to



appreciate that the minor child may not be permitted to re-enter and continue residing in the USA given that his immigration status being directly linked to the Appellant and her ongoing immigration process.

10. In the affidavit filed on behalf of the Appellant pursuant to the order dated 12.06.2026, the Appellant has annexed the tourist visa as well as the F-2 visa of the minor child and has submitted that, in order to undertake international travel while on F-1/F-2 visas, the academic institution in which the principal F-1 visa holder is enrolled is required to issue an updated Form I-20 for travel purposes in respect of both the student and the dependent. According to the record, the minor child has always travelled on F-2 dependent status despite also holding a tourist visa. It is further stated in the said affidavit that any departure of the minor child from the USA during the pendency of the change-of-status application would adversely affect the immigration process.

11. The Appellant has also relied upon an opinion furnished by an immigration attorney in the USA stating that, if the minor child were to leave the USA at this juncture, it would have a severe, direct, and irreversible effect on his immigration status.

12. Learned Senior Counsel for the Appellant submitted that the learned Family Court failed to consider that the Respondent is presently employed as a Vice-President at a multinational corporation and is financially capable of travelling to and spending meaningful time with the minor child in the USA during the summer vacation of 2026, as he had done on a previous occasions.

13. Learned Senior Counsel for the Appellant submitted that the minor child had travelled to India during the summer vacations of 2024 and 2025,



as well as during the winter vacation of 2025, and that such visits were facilitated by the Appellant. It was submitted that the past conduct of the Appellant clearly demonstrated her *bona fides* and negated any allegation that she was attempting to deny the Respondent access to the minor child. Accordingly, it was contended that the Appellant has always acted *bona fide* and has never obstructed or prevented the minor child from travelling to India to meet the Respondent.

14. Learned Senior Counsel for the Appellant submitted that the new academic session of the minor child's school is scheduled to commence on 15.07.2026 and that, as per the Impugned Order, the minor child is directed to be returned to the Appellant at least three days prior to the reopening of the school. It was submitted that it would, therefore, be in the best interests of the minor child to remain in the USA so as to ensure his presence at the commencement of the academic year, as any departure from the USA would directly jeopardize the child's school enrolment and academic continuity.

15. In view of the aforesaid submissions, learned Senior Counsel for the Appellant contended that the Impugned Order passed by the learned Family Court is liable to be set aside or, in the alternative, modified to the extent that the Respondent shall be entitled to receive custody of the minor child from the Appellant and remain with the child in the USA without bringing the minor child to India.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

16. *Per contra*, learned Counsel for the Respondent strongly opposed the submissions advanced on behalf of the Appellant and contended that the minor child holds a B-1/B-2 tourist visa, which is valid for a period of ten



years and is, therefore, capable of re-entering the USA on the strength of the said visa even if the F-2 visa is no longer valid. It was further submitted that, under the applicable immigration framework in the USA, the Appellant is entitled to continue in lawful F-1 non-immigrant status upon completion of her academic programme during the period of Optional Practical Training (“OPT”). It was, accordingly, contended that the dependent F-2 status of the minor child remains secure, operative, and valid under the applicable law of the USA.

17. Learned Counsel for the Respondent further submitted that, notwithstanding the complete stability of the immigration status of the minor child, the Appellant had failed to place on record updated documentary material regarding her current OPT employment status and the corresponding immigration records of the minor child. It was further contended that a perusal of the historical visa stamps demonstrates that the minor child’s departure from and return to the USA remains entirely feasible. Learned Counsel also submitted that the minor child holds a valid multiple-entry B-1/B-2 visa until 31.07.2029 and would, therefore, be in a position to return to the USA on the basis of the said tourist visa.

18. Learned Counsel for the Respondent submitted that the documents relied upon by the Appellant clearly indicate that the process for change of the Appellant’s visa status had not yet commenced. It was further contended that the submissions advanced by the Appellant with regard to the immigration status of the minor child were wholly misconceived and, for that reason, were rightly rejected by the learned Family Court in the Impugned Order.



ANALYSIS AND FINDINGS:

19. Having considered the submissions advanced on behalf of the Appellant as well as the Respondent, we are of the considered view that the Impugned Order does not adequately appreciate the immigration-related concerns raised by the Appellant while holding that such objections do not justify denial of access to the Respondent. The Impugned Order proceeds on the basis that there is no legal prohibition, judicial restraint, statutory embargo, or binding direction of any competent immigration authority on record to indicate that the minor child is prohibited from travelling outside the USA. It further observes that the advice received from immigration consultants may be relevant to the Appellant's personal immigration planning but cannot be elevated to the status of a legal bar against the child's travel. The learned Family Court has also observed that immigration rules and visa processes in foreign jurisdictions, including the USA, are subject to frequent changes and stricter scrutiny, and that the pendency of such processes cannot indefinitely suspend the father-child relationship.

20. The Impugned Order has, however, overlooked the serious concerns arising from the change in the Appellant's immigration status and the consequential impact on the minor child's residence and immigration status in the USA. The material placed on record by the Appellant indicates that the minor child's immigration status is linked to that of the Appellant, whose visa status is presently in transition consequent upon the completion of her academic programme and the commencement of employment in the USA.

21. Further, the minor child is presently studying in the USA, and the new academic session is stated to commence on 15.07.2026. Although the opinion of the attorney placed on record is not binding on this Court, the



opinion expressed on affidavit by a qualified immigration attorney may be treated as a statement of fact having persuasive value. On the other hand, the Respondent has relied upon the existence of a tourist visa held by the minor child and has submitted that the child would be able to return to the USA in compliance with the Impugned Order, which directs that the child be handed over to the Appellant three days prior to the commencement of the academic session.

22. Accordingly, if the minor child travels to India pursuant to the Impugned Order and is, thereafter, not permitted to return to the USA on account of immigration-related complications, the same would not be conducive to the welfare and best interests of the minor child. At present, the custody of the minor child remains with the Appellant, whereas the Respondent has been granted visitation rights during the summer and winter vacations by the learned Family Court. In these circumstances, the immigration-related issues give rise to a serious concern regarding the child's ability to travel to India and thereafter return to the USA, particularly when the child's visa status is linked to that of the Appellant, whose own status is presently in transition on account of her employment. Accordingly, the observation of the learned Family Court that the immigration-related issues would result in denial of access to the Respondent does not appear to be entirely accurate.

23. As the Respondent has already travelled to the USA on 12.06.2026 and is presently there, Respondent shall be able to have access to the minor child while he remains in the USA, and he may continue to have custody of the child during the summer vacation without bringing the minor child to India, in view of the uncertainty surrounding the child's immigration status.



Before the Respondent travelled to the USA, he was aware about the pendency of this Appeal and was specifically directed that he would await the outcome of this Appeal for bringing minor child back to India. Accordingly, no prejudice would be caused to the Respondent if he continues to be in the USA to spend the entire summer vacation with the minor child without bringing the minor child back to India. Although it was submitted during the course of the hearing that the Respondent has to join his work on 22.06.2026 and needs to return to India for the same, it is always possible for the Respondent to give priority to the minor child by extending his stay in the USA by working remotely from there.

24. In view of the aforesaid analysis, the Impugned Order is modified to the extent that the minor child shall remain with the Respondent in the USA during the vacation period without being brought to India, and the Respondent shall ensure that the child is returned to the Appellant in the USA three days prior to the reopening of the minor child's school on 15.07.2026.

25. Accordingly, the present Appeal is allowed and the Impugned Order passed by the learned Family Court stands modified to the extent indicated hereinabove. The Appeal, along with the pending Applications, stands disposed of.

TEJAS KARIA, J
(VACATION JUDGE)

MADHU JAIN, J
(VACATION JUDGE)

JUNE 17, 2026

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