

## **When your spouse wants a divorce abroad**

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RITA AND JOSHUA WERE MARRIED IN a lavish wedding ceremony in Manila. After 10 years, they were blessed with three children. Joshua left for the US to seek greener pastures for his family. Rita patiently waited for Joshua's return but all she received were documents indicating that Joshua was seeking a divorce from a California court.

What happens when a Filipino files for divorce abroad? Will this divorce be recognized by the US Citizenship and Immigration Service and will the first spouse now be free to remarry?

Divorce is not recognized in the Philippines. The only exception is Article 26 of the Family Code where the divorce was obtained by the foreigner against a Filipino spouse. As soon as the foreign divorce is obtained, both the foreigner and the Filipino spouse are free to re-marry. The reason behind this law is to avoid the absurd and unjust situation of a Filipino citizen still married to his or her foreign spouse while the latter is no longer married to the him or her because he has obtained a divorce abroad.

On the other hand, if a Filipino spouse migrates and obtains a divorce, the latter may be recognized in the foreign jurisdiction only but not in the Philippines. This is because Article 26 applies only to alien spouses and not Filipino spouses. In this case, if the Filipino spouse who obtained the divorce re-marries abroad, then this second marriage may be considered a bigamous marriage under Philippine jurisdiction. This means that if the Filipino spouse returns to the Philippines, he will be considered married to his first spouse, not to the second spouse despite the foreign divorce.

### **Inevitable complications**

One way of obtaining an immigrant visa is through a good faith marriage to a US citizen. In marriage cases, all prior marriages must be dissolved to enter into a valid marriage for purposes of receiving the visa. To follow the letter of the present family law, Filipinos in the US must wait until they become naturalized US citizens before they divorce their spouses. This will be an absurd situation especially if s/he is not able to obtain lawful status to enable him to naturalize.

Also, an issue on applicability of the dual citizenship (RA 9225) law arises. If the naturalized US citizen subsequently reacquires Filipino citizenship, will this foreign divorce still be recognized? There is no specific provision in the Family Code that addresses this issue.

### **De facto divorces**

The Philippines is one of the few jurisdictions which does not recognize divorce and this fact is known to most immigration examiners. In adjudicating petitions, careful analysis of the facts of each case is made, especially when a Filipino beneficiary of the petition submits legal documents showing annulment of marriage.

Annulment of marriage under Article 36 of the Family code is like a de facto divorce. This particular section of the Family Code provides that a marriage may be annulled if one of the contracting parties is psychologically incapacitated to perform the essential marital obligations, even if this incapacity surfaces only after the marriage is contracted.

To exit from bad marriages, a couple must claim and prove ?psychological incapacity? to obtain the annulment and for the couple to free themselves from their married status. It is a fact that Article 36 has been subjected to abuse.

Considering that the Philippines is known not to recognize divorce, in general many immigration examiners look beyond the annulment decree to determine whether there is a ?bona fide divorce,? a genuine divorce that was not obtained for purposes of circumventing immigration law.

While the policy behind the no-divorce is clear in the legal definition of marriage as the ?foundation of the family and an inviolable social institution,? the provisions relating to marriages and annulment, must nevertheless be revisited.

Even without divorce, we have seen couples who are separated because of bad marriages or even cohabiting with new partners while they remain legally married. In the context of immigration law, issues are raised on the validity of annulment cases, especially where the couples are blessed with children.

### **Changes in family laws needed**

In remarriages of Filipino spouses with foreign divorce, going back to the Philippines may subject them to bigamy charges. This is true even if the spouse is subsequently naturalized as a US citizen after obtaining the foreign divorce.

An ideal situation for the 21st century is for the Philippine Congress to enact changes in family laws; to finally and absolutely recognize all foreign divorces even if the petitioner spouse is not foreign spouse. Laws on ?de facto? divorces must also be amended to make them more consistent with present realities.

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ref.: <http://globalnation.inquirer.net/mindfeeds/mindfeeds/view/20080703-146228/When-your-spouse-wants-a-divorce-abroad>

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