

Interim Decision #2220

MATTER OF ATWATER
In Visa Petition Proceedings

A-20559162

Decided by Board August 17, 1973

- (1) Under the law of the Dominican Republic, divorce of nonresident foreigners is permissible provided that, while at least one of the parties is present at the hearing and the other represented by the holder of a special power of attorney, they expressly agree to attribute jurisdiction to the Dominican court.
- (2) Notwithstanding beneficiary in the instant case, a native and citizen of the Philippines, presented a Dominican divorce decree purporting to terminate her prior marriage which decree recites that she appeared before the Dominican court and that an attorney appeared to represent the husband, in the light of evidence of record strongly suggesting that the husband's power of attorney was a forgery, she has failed to meet the burden of establishing the legal termination of her prior marriage and, hence, the validity of her subsequent marriage to the United States citizen petitioner for immigration purposes.

ON BEHALF OF PETITIONER: Joe Reid, Esquire
1204 Tower Life Building
San Antonio, Texas 78205
(Brief filed)

This is an appeal from the District Director's decision to deny the petition filed on behalf of the beneficiary to accord her status as an immediate relative, pursuant to section 201(b), as the spouse of a citizen of the United States, for visa issuance purposes. The petitioner was born in the United States and is a citizen thereof. The beneficiary is a native and citizen of the Philippines.

A petition submitted on behalf of a spouse must be accompanied by a certificate of marriage to the beneficiary and proof of the legal termination of all previous marriages of both wife and husband, 8 CFR 204.2(c)(2). The record contains a Texas certificate of marriage of the parties, dated April 7, 1972. A Massachusetts divorce decree was submitted which indicates that the petitioner's prior marriage was legally terminated in 1953. A Dominican divorce decree purporting to terminate the beneficiary's prior marriage, to Guerrero Silvestre, was also submitted, but its validity was questioned by the District Director. We agree with the District Director and shall dismiss the appeal.

Interim Decision #2220

The Dominican decree recites that the beneficiary, who was the plaintiff, personally appeared before the court, while her husband, Ferrero Silvestre, was represented, and appeared, by his attorney in fact, by virtue of a power of attorney, signed the twenty-first of February 1972 before a notary public in the Republic of the Philippines. A photocopy of the power of attorney by Mr. Silvestre, dated February 24, 1972, is in the record. Whether the signature thereon is actually Mr. Silvestre's, however, is questionable. He has sworn in an affidavit, dated November 2, 1972, that he had no notice or knowledge of his wife's divorce from him until October 10, 1972, when questioned by the United States Immigration and Naturalization Service. The record also contains a photocopy of a letter from the beneficiary's father, in which he advises her to stick to her story that her husband signed the instrument in question. Notwithstanding a letter from the notary stating that the signature of Mr. Silvestre was authentic, the evidence strongly suggests that Mr. Silvestre's signature on the power of attorney is a forgery.

A copy of the Dominican law under which the divorce was reportedly issued has been submitted by the petitioner. Article I, paragraph (5), permits divorce of nonresident foreigners "provided that, while at least one of them is present at the hearing and the other represented by the holder of a special power-of-attorney, they expressly agree to attribute jurisdiction" to the Dominican court by an instrument executed by a notary public. If Mr. Silvestre, the absent spouse, did not expressly agree to submit himself to the jurisdiction of the Dominican court, then the proceedings were not in conformity with the requirements of Dominican law, were a fraud upon the Dominican court, and were invalid. The fact that an attorney actually appeared to "represent" the husband does not meet with the requirement that the absent spouse authorize an attorney to appear on his behalf, or that the absent spouse expressly agree to submit to the jurisdiction of the court.

In visa petition actions, the burden to establish eligibility lies with the petitioner, *Matter of Brantigan*, 11 I. & N. Dec. 493, 495 (BIA, 1966); *Matter of Soo Hoo*, 11 I. & N. Dec. 151, 152 (BIA, 1965); *Matter of Yee*, 11 I. & N. Dec. 27, 30 (BIA, 1964); *Matter of B—*, 9 I. & N. Dec. 521, 523 (BIA, 1961). The petitioner has not met this burden. It appears from the evidence submitted that the beneficiary's divorce from her prior spouse was invalid, and that consequently she is still legally married to him. Thus, she cannot be deemed the spouse of the petitioner for immigration benefits.

ORDER: The appeal is dismissed.