Filipino Reporter
FAIR, FEARLESS, FACTUAL
February 18-24, 1977

DIVORCE, RP-STYLE

If marriage comes, is GC far behind?

By REUBEN S. SEGURITAN
(First of a series)

Because it is Valentine's and this year is a hard year for aliens, it is appropriate to write not about love, courtship and marriage, but of divorce, marriage and immigration. The question that has often been asked is: If marriage comes, will the green card be far behind?

One answer of course is: maybe not. But in some instances, the green card may never come.

This column will try to present and discuss the issues involved in such situation and update you on the current matrimonial and immigration developments.

At the outset, it is obvious that for somebody to get married either to a citizen or permanent resident, he must be legally free to marry. This means that if he was previously married, his wife is no longer living. If the wife is still living, the previous marriage should be annulled or a divorce must be obtained. In some jurisdictions, one is free to marry if the spouse is missing and has not been heard of during a prescribed number of years.

Not a few Filipinos have obtained divorce so that they could marry a citizen or resident. Whether such divorce is for business or for pleasure is beyond the scope of this article. Even if divorce is not recognized in the Philippines, a divorced Filipino is treated as unmarried in the United States for the purpose of achieving immigration benefits.

It should be made clear that the spouse need not consent to a divorce. For example, a Filipino in New York may divorce his wife in the Philippines in the following manner: a qualified process server delivers the summons to the wife. The process server then executes an affidavit stating that he served the summons to the wife in the Philippines. The wife need not sign anything. After a certain number of days the affidavit of service together with other papers prepared by an attorney are filed with the Clerk of Court who would then schedule a hearing. If the wife does not contest the action, the divorce judgment could be obtained within a few weeks.

The Immigration Service normally would not question the validity of a divorce judgment issued by a court in the United States or in a foreign country, provided one of the parties was physically present within the court's jurisdiction.

In one case (**Matter of F**), the husband obtained a divorce in Florida. During the immigration interview, the husband got scared that he admitted that he had never actually resided in Florida. The Immigration Service denied the visa petition made by his wife for the reason that the husband's divorce was not valid for lack of the required residence in Florida.

Upon appeal, the decision of the Immigration Service was reversed. It was held that for immigration purposes, the INS should regard as valid a divorce regularly granted by a state court and a subsequent remarriage formalized in conformity with the laws of that State or of any other States. It took note of the inadequacy of immigration officers to adjudicate troublesome legal questions of such nature.