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Divorced Fil-Ams may remarry in RP

By REUBEN S. SEGURITAN

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A Filipino bids farewell to his wife in Manila and migrate to the United States. He becomes a naturalized American citizen. Shortly thereafter, he obtains a judgment from a court of one of the states divorcing his wife. He then goes back to the Philippines and marries another Filipina. Does he have the legal capacity to marry under Philippine laws? Is the second Filipina a legal wife for purposes of the U.S. immigration laws?

The foregoing questions involving the above mentioned fact pattern were raised some years ago in the case of three Filipino natives who were naturalized American citizens (Matter of S--- and L--- and P---). Two of them divorced their Filipina wives in California and the third got his divorce in Colorado. They went back to the Philippines to enjoy their freedom but in their spree they got hitched again. A few months after the marriage, they came back to the United States, reportedly on the prodding of their brides.

Question: Could they petition for their respective wives to become permanent residents?

The Immigration District Director answered no, arguing that a second marriage could not be lawfully effected in the Philippines when the previous marriage had been terminated in the United States by divorce.

He based his denial upon a reply to an inquiry to the Consulate General of the Philippines in San Francisco. The Consulate memo purportedly said that a divorce obtained by a husband in the U.S. against a Filipina wife whom he married in the Philippines could not be recognized in said country because Article 17, Paragraph 3 of the New Civil Code of the Philippines states:

"Prohibitive laws concerning persons, their acts, or property, and those which have for their object

public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country."

The argument then concluded that the divorce, which was a judgment rendered in a foreign country, could not render ineffective the Philippine prohibition on divorce.

Upon appeal to the Immigration Board, the denial was overturned. The Board said that the Consulate memo indicated a response to a general question which had not set forth the nationality status of the petitioner. Moreover, the language of the section of the Philippine law quoted was so broad. Hence, the memo could not be relied upon as an authority to a situation which had not been specifically dealt with.

The Immigration Board went on to state that where the divorce decree involves alien spouses, the prevailing rule in jurisdictions following the nationality principle (to which the Philippine subscribes to) is to consider the decree as valid if valid under the nationality of said spouses even if said decree is not recognized by the internal municipal law.

If only one of the spouses is a Philippine national, recognition of the divorce will depend on the individual circumstances. In the aforementioned cases, it was found out that the petitioning husbands had been domiciliaries of the U.S. for a long time and had in fact been naturalized. Hence, according to the Immigration Board, in the absence of any showing that the marriages were repugnant to a strong public policy of the Philippines, they could be recognized as valid for immigration purposes.

In its decision the Board made an observation which may be worth-

while to ponder upon:

"Those Philippine nationals who are determined to disengage themselves from the marital bonds may consider it worth all their expense and time to renounce their nationality, embrace a new one, and obtain a divorce which would be considered valid under the law of their new nationality. They may later return to the Philippines and remarry there, without fear of inviting judicial comment on the effect of their acts on the 'good morals of the community.' The doctrine is that by changing nationality, a party changes his personal law automatically; it is not a fraud against a divorce prohibition but against the law of nationality. The conflicting policies must be effectively harmonized and reconciled by an approach that takes into account all relevant considerations, such as the element of good faith, or the lack of it, on the part of one or both parties seeking a divorce, the presence or absence of an attitude of evasion, and the existence of children and their valid moral claim for protection and support."