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Alien who marries for visa risks ouster

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Termination of marriage and failure to fulfill one's marital obligation are grounds for deporting an alien under the Immigration and Naturalization Act. The alien in either case is presumed to have procured his visa by fraud and he carries the heavy burden of proving otherwise.

Under the first ground, the following elements must be present:

(1) The alien obtains entry into the United States with an immigrant visa or other documentation procured on the basis of a marriage to an American citizen or permanent resident; (2) Said marriage has been entered into less than two years prior to such entry into the United States; and (3) Within two years subsequent to the entry of the alien the marriage is judicially annulled or terminated.

Under the second ground, it must appear to the satisfaction of the Attorney General (not of the spouse) that the alien has failed or refused to fulfill his marital obligation. No decree dissolving the marriage is necessary.

The leading case in illustrating the deportability of an alien due to termination of marriage is **Todaro v. Pederson**. The alien in that case was married to an American citizen in a civil ceremony held in Italy in

January 1956. On the basis of the marriage, the alien was able to enter the United States as a non-quota immigrant in June 1957. In February 1959, the marriage was terminated by a decree of divorce issued by an Ohio court. Because the alien's marriage was dissolved judicially within two years from his entry, the Immigration Service found the alien deportable.

A court where the deportation order was appealed said, in adjudicating the case, that the alien bore the heavy burden of establishing to the satisfaction of the Attorney General that the marriage was not contracted for the purpose of evading any provision of the Immigration law. During the hearing conducted by an officer of the Immigration, the court noted that the alien failed to sustain the burden of proof cast upon him by the statute. Hence, he should be deported.

In the course of the Immigration hearing, the issue had centered on whether it was the alien or his wife and mother-in-law who was responsible for the dissolution of the marriage. The alien charged that the mother-in-law deliberately and artfully contrived to destroy the marriage. In addition, he testified that the wife had voluntarily admitted prior promiscuity.

The Immigration officer found, however, that the divorce was not induced by the mother-in-law nor the wife. He noted that the mother-in-law had paid for the alien's passage to the United States and had forwarded him additional funds. The mother-in-law had also assisted materially in the preparations for a religious wedding ceremony. The wife, on the other hand, had cooperated in every way to bring about the realization of their marital plans made at the time of their civil marriage. There had been, in other words, a long and friendly attitude on the part of the wife and the mother-in-law. It was, therefore, the conclusion of the Immigration officer that the divorce was induced by the offensive conduct of the alien.

From the above discussion, it may be stated as a general rule that it is difficult to overcome the presumption of fraud in a case where marriage is terminated within two years from the entry of the alien into the United States. Proof needed to overcome the presumption should establish that the annulment or divorce was caused by incompatibility and other causes not related to fraudulent entry. The petitioning spouse enjoys a great advantage over the alien who chooses to turn against her. In the case of the alien who fails to fulfill his marital obligation, there is no presumption of fraud and it is the government who must prove deportability. But again, judging from the cases discussing the issue, the alien is also faced with almost the same odds.

In the case of **Kokkinis v. District Director**, the court declared that the alien failed to fulfill his marital obligation by not consummating the marriage and never living with his wife. The alien's denial of the charge was considered by the court as incredible.