

# Filipino Reporter

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## Women divorcees also may remarry

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It is easy to understand why a naturalized American citizen who divorced his Filipina wife in the United States may validly remarry another Filipina in the Philippines. After all, he is no longer a Filipino citizen, and, logically, his marital status is governed by the law of his nationality, which is American.

But what about a Filipina citizen living in the Philippines whose husband divorced her in the United States? Is the Filipina free to remarry in the Philippines and be sponsored by her second American husband to become a U.S. permanent resident?

It may sound somewhat incredible in light of the divorce prohibition in the Philippines, but the Immigration Board considered the second marriage as valid. Hard cases make bad laws, it has been said. In *Matter of Whitehurst*, an iniquitous situation prompted the making of a good law.

The Filipina had been previously married to an American citizen whom she had met during the latter's brief sojourn in the Philippines.

After an abbreviated courtship, the Filipina accommodated the man's offers of love. Three years later, the husband left for the United States, and he subsequently obtained a divorce in South Carolina.

Meanwhile, the wife, now 33, met another American, who was nine years her junior and a member of the US Armed Forces stationed in Angeles City. The wife, still nurturing the pain of abandonment, did not take long to decide on a second marriage. Then they wanted to come to the US.

At first, the District Director of the Immigration Service denied the petition, relying upon an opinion of Professor Eduardo Caguioa to the effect that divorces obtained by Filipinos abroad would offend Philippine public policy. It was pointed out by the Immigration Board, however, that in this case, the wife had always been in the Philippines and, therefore, the authorities cited might not be applicable.

The Immigration Board then ordered a further consultation with

experts on the subject. The Board apparently was influenced by certain humanitarian considerations disclosed by the peculiar circumstances of the case. It took note of the fact that while the husband appeared to have willfully, if not unjustifiably, abandoned the wife, he was free to marry, while the wife was left in the cold, confronted with the anomalous situation of being deprived of the right of matrimony. Also, their child, who was barely a month old, faced the bleak prospect of illegitimacy.

The opinion of the Philippine Undersecretary of Justice was solicited. He declined to rule upon the question. Instead, he stressed that there was a legal presumption that a marriage duly contracted by the parties was valid, and that it was normal for an executive official to rely on that presumption. This was especially true because the question arose only in connection with the issuance of a visa to a married woman desirous of migrating to her husband's country which recognized divorce.

The Board conceded that the marriage was duly contracted. Pursuant to Article 59 of the New Civil Code of the Philippines, a license was properly issued, and Article 61 thereof was complied with in that the divorce was divulged in the application for a marriage license.

In conclusion, the Board observed that when the second marriage was performed, the solemnizing officer had knowledge of the beneficiary's prior marriage and divorce. Also, the validity of the second marriage had not been the subject of any attack in a proper legal proceedings.