

LIRA'S IMMIGRATION CORNER

THIS ARTICLE will look at Filipinos remarrying in the UK especially in the context of Immigration.

Free to Marry

To marry in the UK, both parties must be free to marry. Hence, if you are already married, you are required to first dissolve your current marriage before you can enter into a new marriage. This requirement applies regardless of the length of separation from your spouse.

For most people dissolution of marriage is done by petitioning for a divorce. For Filipinos previously married in the Philippines seeking to dissolve their marriage, there is another factor to consider, Philippine law does not provide for divorce and in most cases will not recognise a decree of divorce granted under the laws of England and Wales. This article seeks to clarify some of the more common misconceptions surrounding divorce and remarriage where there is a clash of jurisdiction (England v Philippines).

Myth buster: There is no such thing as an “automatic divorce”.

Divorce jurisdiction

To petition for divorce in the UK you will need to show, amongst other things, that the court has the power to look at your petition or put another way, that UK law applies. Major changes were introduced by the Divorce, Dissolution and Separation Act 2020, with the changes coming into effect on the 26th of April 2022. However, the requirement that a court in England and Wales must have jurisdiction to hear the petition remains.

The court has the power or jurisdiction to consider your application for divorce if:

“(a) both parties to the marriage are habitually

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- resident in England and Wales;*
- (b) *both parties to the marriage were last habitually resident in England and Wales and one of them continues to reside there;*
- (c) *the respondent is habitually resident in England and Wales;*
- [(ca) in a joint application only, either of the parties to the marriage is habitually resident in England and Wales;]*
- (d) *the applicant is habitually resident in England and Wales and has resided there for at least one year immediately before the application was made;*
- (e) *the applicant is domiciled and habitually resident in England and Wales and has resided there for at least six months immediately before the application was made;*
- (f) *both parties to the marriage are domiciled in*

England and Wales; or

(g) *either of the parties to the marriage is domiciled in England and Wales].]*

Source: Domicile and Matrimonial Proceedings Act 1973 (as amended)

I have highlighted the above section (d) as the issue of habitual residence can often present a concern to Filipinos who have married in the Philippines and now wish to divorce in the UK.

Habitual residence is quite different from domicile and different still from citizenship. Caselaw has referred to habitual residence as where a party has made his or her “home”. Hence if you have Philippine citizenship you may still be regarded as habitually resident in the UK regardless of the fact that you may not be British, provided the UK is in fact your “home”.

Myth buster: You must be British to be divorced in the UK. This is wrong.

The most common misconception is that a marriage conducted in the Philippines cannot be dissolved in the UK. Given the premise that you were married in the Philip-



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ippines, hold Philippine citizenship but now live in the UK for a period of at least 12 months, you may be able to dissolve your marriage by applying for a divorce in the UK. If granted, the decree of divorce will be valid in the UK and in most countries but not the Philippines as the Philippines does not presently recognise the process of divorce. I am deliberately not dealing with Philippine Family law, and I defer to those who are experts in that field but suffice to say that a divorce granted in the UK, even if not recognised in the Philippines, may still be valid in the UK. This is of course crucial if you are looking to remarry. The validity of your subsequent marriage will have wide ranging importance including whether an immigration application based on marriage will succeed.

It is noteworthy that an application for a visa to enter the UK by an applicant from abroad, such as the Philippines, will be considered by the Home Office and they are therefore required to apply UK law. It follows that they should also recognise as valid a divorce granted in the UK.

Myth buster: Filipinos in the UK cannot divorce if they married in the Philippines. This is wrong, but you need to distinguish between the validity of divorce in the UK and the Philippines.

Immigration and habitual residence

As noted above, habitual residence is distinct from citizenship or indeed immigration status. You can be regarded habitually resident in the UK even if you have limited leave to remain or indeed even if you do not have a visa (overstayers) provided the UK is your “home”. Various factors can be indicative that you regard the UK as your home such as the length of time you have been living here and family members (children and partners) in the UK. These factors may exist regardless of your immigration status.

Myth buster: A person can only divorce in the UK if they can show that they have permanent residence in the UK. This is wrong as habitual residence is not defined by your immigration status.

Note: Whilst this article refers to the United Kingdom (UK), it should be noted that the laws discussed above emanates from the laws of England and Wales.

Beware: A valid divorce and marriage in the UK may not exempt you from legal issues under Philippine law. As usual, before embarking on any legal process you should seek legal advice. ■

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