IN THE MATTER OF B——

In VISA-PETITION Proceedings

A-6799288

Decided by Central Office May 10, 1948
Decided by Board July 20, 1948

Marriage—Validity of second marriage where prior marriage terminated by divorce, a party to such divorce being physically within the divorcing court's jurisdiction—Visa-petition (immigration) proceedings.

An alien who lived in Florida, went to Mexico in 1947 for a few days and was granted a divorce in Mexico, returned to live in Florida, and later remarried in Georgia, was granted his visa petition on behalf of his second wife, notwithstanding State (Florida and Georgia) views as to the validity of such divorce on the issue of "domicile", it being held that an administrative agency's inquiry should end where it appears a party to such divorce was physically within the divorcing court's jurisdiction.

BEFORE THE CENTRAL OFFICE

Discussion: The petition was filed for the purpose of establishing that the beneficiary is the wife of a citizen of the United States as contemplated by section 4 (a) of the Immigration Act of 1924.

The petitioner has presented satisfactory evidence of his birth in the United States. The visa petition contains the allegation that he was married to the beneficiary on August 30, 1947, at Homerville, Ga. The petitioner had been previously married to one D—— on October 11, 1930, and submitted a copy of a decree of divorce issued by a Mexican court purporting to dissolve this marriage on August 19, 1947. The petitioner was questioned by an officer of this Service, and it appears that he has been domiciled in Florida for the last 22 years; that his first wife was adjudged insane on May 1, 1944; that she is still alive and confined to a mental institution in Florida; that his reason for obtaining the Mexican divorce was that insanity is not recognized as a cause of divorce in Florida, and that the Florida courts do not recognize incompatibility (which was the principal allegation for the Mexican divorce). The petitioner admitted that he did not have residence in Mexico at the time the action for divorce was instituted. It further appears that he maintained his residence in Florida, proceeded to Laredo, Tex., where he remained temporarily in hotels and proceeded across the border into Mexico only for short periods to commence divorce proceedings. As soon as that had been done he

returned to his unrelinquished domicile in Florida where the result of the divorce proceeding was forwarded to him by mail.

In New York and New Jersey where the question of the validity of so-called "Mexican mail order divorces" was specifically under consideration, the courts have uniformly held them invalid where the parties were domiciled in the United States and had no bona fide residence or matrimonial domicile in Mexico (*Reik* v. *Reik*, 112 N. J. Eq. 234, 163 A 907; *Petition of Raffel*, 49 Supp. 109 D. C. N. Y. 1941; *Hubbard* v. *Hubbard*, 228 N. Y. 81; *Petition of Haverly*, 42 N. Y. Supp. 2d 917). While it does not appear that the question of the validity of Mexican "mail order" divorces has been specifically considered by the courts of Georgia, the decisions in that State are to the effect that a judgment of divorce in another State based on constructive service is not within the provision of the Constitution of the United States requiring that full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every State (*Matthews et al.* v. *Matthews*, 139 Ga. 123, 76 S. E. 855; *Solomon* v. *Solomon*, 140 Ga. 379, 78 S. E. 1079). In *Goolsby* v. *State*, 24 Ga. App. 377, 100 S. E. 788, the court sustained a conviction of bigamy, holding that a divorce obtained from his first wife in Alabama on constructive service was a nullity where he and his first wife were residents of Georgia at the time of the divorce action. In *Cochran* v. *Cochran*, 173 Ga. 856, 162 S. E. 99 and *Adams* v. *Adams*, 191 Ga. 537, 13 S. E. (2) 173, it was held that a divorce obtained by the husband in Nevada in which State he remained only for the statutory period of residence without having a *bona fide* domicile there, was void and unenforceable. It is clear, therefore, that the Georgia courts would not recognize the validity of the divorce obtained by the petitioner in Mexico since neither of the parties had residence or domicile in that country. Hence his marriage to the beneficiary, while under the disability of a prior marriage, was not a valid marriage.

With respect to the question of whether the petitioner's marriage to the beneficiary in Georgia may be considered valid in Florida, where the parties are domiciled, a marriage which is invalid under the laws of the place where it is contracted will be held invalid in other jurisdictions where the question of its validity may arise (38 C. J. 1277). Hence the Georgia marriage, since invalid in that State, will not be recognized in Florida. As to whether a valid common-law marriage could be considered to have come into existence in Florida, common-law marriages being recognized in that State, it was held in *Beckwith* v. *Bailey*, 119 Fla. 316, 161 So. 576 that a divorce decree is not entitled to extraterritorial recognition where neither of the parties was domiciled in the State where the decree was rendered. In the instant case where the petitioner and his first wife were domiciled in Florida and he went to a foreign country for the sole purpose of ob-

taining a divorce which he could not have secured in the State of Florida and where neither of the parties were domiciled in Mexico, it is clear that the Florida courts would not recognize the validity of the Mexican divorce. Since an impediment existed to the petitioner's marriage to the beneficiary, no common-law marriage could have come into existence in the State of Florida. It is concluded that the petitioner has not established a valid marriage to the beneficiary.

Recommendation: It is recommended that the visa petition be denied.

So ordered.

BEFORE THE BOARD

Discussion: This is an appeal from the decision of the Commissioner of Immigration and Naturalization denying the petition of P—— K—— B—— for a visa in behalf of his alleged wife. It is conceded that Mr. B—— is a citizen of the United States. The only question presented is whether or not the decree of divorce granted Mr. B—— in Mexico from his wife is a recognized decree and whether or not the subsequent marriage of the petitioner and another in the State of Georgia may therefore be considered a valid marriage for the purpose of comprehending the prospective beneficiary within the provisions of section 4, subdivision (a) of the Immigration Act of 1924.

The evidence of record establishes that P—— K—— B—— was a resident of the State of Florida prior to his proceeding to Mexico, and he has since resumed residence in that State. On October 11, 1930, B—— married, and in connection with the prospective proof of the dissolution of that marriage he presented a decree of divorce issued by the Mexican court purporting to dissolve this marriage on August 14, 1947. Following the entry of this decree of divorce, B—— proceeded to Homerville, Ga., where he married the prospective beneficiary on August 30, 1947.

A report of investigation is attached to and made part of the record. In that report B—— was asked whether or not he appeared in court in Nuevo Laredo, Mexico, subsequent to July 9, 1947, for the purpose of instituting a suit for divorce, and in response to that question he alleges that he went to "what they call the civil judge." He was thereupon asked whether or not the divorce was granted in any civil court in Nuevo Laredo, Mexico, before he left that country, to which he responded in the negative. He was further asked where he resided immediately following July 9, 1947, whereupon he stated that he was in Mexico for about 4 days and that he "was back and forth across the river there several times * * *." He further asserted that he resided "on the American side at Laredo for approximately 1 or 2 weeks."

So far as the record shows, there was constructive service in connection with the dissolution of the marriage. There is some allegation that he was unaware of the whereabouts of the first wife, although at that time she was a patient in a mental institution in Florida. To this extent his marital life was disrupted and he has been living apart from this first wife because of her being a patient in such hospital.

The case is distinguishable from the usual case of a Mexican "mail order" divorce where neither party to the divorce action is at any time during the pendency of the case within the jurisdiction of the court. Here the plaintiff in the divorce case was in Mexico and within the jurisdiction of the court.

The Service takes the view that the State of Georgia, the State where the petitioner married the beneficiary of the visa petition, will not recognize the Mexican divorce and hence, the marriage in Georgia is invalid. It also takes the view that Florida will not recognize the invalid Georgia marriage nor would it recognize the Mexican divorce. The Service reasons that as the petitioner was not domiciled in Mexico under decisions of the courts of Georgia and Florida these States will not recognize such a divorce. In support of its view it cites cases where divorces granted in a third State have not been recognized by Georgia and Florida. If this view be sound the immigration authorities must inquire into the validity of every divorce whether obtained within the United States or elsewhere and satisfy itself that the petitioner in the divorce action in every instance was domiciled within the jurisdiction of the court granting the decree before a subsequent marriage will be recognized. This we feel is improper. It is our view that an administrative agency is going far beyond its legislative sphere when it attempts to inquire into the issue of whether the petitioner for a divorce was domiciled within the jurisdiction of the court granting the decree and therefore whether the decree ought to be recognized.

We think inquiry into the jurisdiction of the court should stop when it is ascertained that a party to the proceeding was actually within the court's jurisdiction. Here the petitioner was physically within the court's jurisdiction. That should end the matter. Whether the petitioner established a domicile we think immaterial. It would certainly transcend any power executive agencies have so far assumed to scrutinize divorces in the manner the decision of the Service suggests.

It is ordered that the appeal from the decision of the Commissioner be sustained and that the visa petition be approved.

Editor's note. See 2, I. & N. Dec. 883; 3, I. & N. Dec. 25; and Interim Decision #350.