

Filipino Migrants Forum

Were you first married in the Philippines?

By Atty. Imelda Argel, Bachelor of Laws (UP), Master of Laws (University of Sydney)

Marriages solemnised in the Philippines are subject to the Philippine law which does not recognise divorce. However, a marriage can be declared 'null and void' on a number of grounds, such as a lack of capacity to enter into the marriage, a marriage where one of the parties is under the legal age for getting married, a marriage between close relatives, a case of mistaken identity or failure to comply with legal requirements. In cases of declaration of nullity of marriage, the defect must have existed on or before the time of the wedding ceremony. The "declaration of nullity" by the appropriate Philippine court has the effect of invalidating the marriage and makes the partners, free to remarry.

Marriages solemnised outside the Philippines in accordance with the laws in force in the country where they were solemnised, and valid there as such, are valid in the Philippines generally. Thus, a marriage in Australia, which is valid under Australian law, is valid in the Philippines. In such cases, because divorce is valid in Australia, a subsequent divorce will be valid and recognised under Philippines law, that is, the divorcee will then be free to remarry and such subsequent marriage will be recognised under Philippine law.

For this reason, many Philippines citizens prefer to get married in Australia. Filipinos who have been first married in the Philippines and who subsequently obtain a divorce in Australia must note that generally the Australian divorce will not be recognised in the Philippines and the first marriage will continue to be valid in that country. However, the

case of *Philippines vs. Orbecido III* (G.R. No. 154380, 5 October 2005) recognised as valid that a divorce obtained by a Filipino who, at the time of the celebration of the marriage was a Filipino citizen, but who later on, became **naturalized** as a foreign citizen at the time he obtained the divorce decree. The reckoning point is not the citizenship of the parties at the time of marriage, but their citizenship at the time a valid divorce is obtained abroad by the non Philippine citizen spouse capacitating the latter to remarry.

To avoid legal issues, many Filipinos enter into a de facto partner relationship (same sex or opposite sex) in cases where the visa of the Filipino partner allows him or her to live in Australia for at least 12 months. A partner visa application may be lodged upon completion of the 12 month de facto partner relationship without needing to obtaining a divorce or annulment of his or her marriage in the Philippines.

This information is of a general nature and should not be taken as authoritative legal advice for specific cases. Australia has a scheme that requires persons who give immigration assistance to be registered as migration agent. The writer, Atty. Imelda Argel is a practising Filipino migration solicitor and a registered migration agent in Sydney, Australia. She is a Solicitor of the Supreme Court of New South Wales, the High Court of Australia, an Attorney at law in the Philippines and in the State of New York, USA. Her Registered Migration Agent no. is 9682957.

She is the author of TIPS on GSM visas, the recipient of the inaugural NSW FAWAA (Filipino-Australian Women's Achievement Award) for her outstanding achievements in corporate practice and entrepreneurship, and the UP Alumini Association (NSW Chapter) Achievement Award for law and community service. More information is available at www.iargel.com.au. You can contact the author by email at info@iargel.com.au or by fax at (+612) 9699 3210 or by appointment at Suite 41, Ground Floor, 61-89 Buckingham St. SURRY HILLS NSW 2010.