

“Overseas Divorce by Custom Customarily Cause Immigration Issues” by Adam Edward Rothwell, Esq.

Over the 13 years I have practiced immigration law, an area that has brought about some of the biggest problems involves cases where the foreign citizen has a prior divorce overseas. There are a handful of situations where a previous divorce overseas may cause major issues including, but not limited to, denial of an immigration application. And the biggest problems are often tied to situations where the foreign citizen got divorced overseas by custom, came to the US, married a US citizen and then applied for an immigration benefit (either a green card, or, if the foreign citizen already has a green card, US Naturalization). The Immigration Service Officer will require definitive evidence the foreign citizen received a legal divorce overseas before coming to the US.

Foreign citizens from countries in Western Europe, Australia, Japan, South Korea and other nations where court registration of divorce has been required for years are more immune from running into problems related to US Immigration applications. Still in many areas of the world family legal relationships are still largely created and terminated by customary practices actions along with ceremonies.

US Immigration law appreciates that citizens of overseas nations have different values, cultures and customs. For these reasons USCIS and the US Department of State may allow for an overseas divorce based on custom to satisfy immigration requirements if the divorce is considered valid by the relevant overseas country of divorce. For example, if Congo accepts customary divorces as valid, the US may also consider a prior divorce that occurred in Congo through custom to be valid. Yet, it is not unusual for a country such as Ghana, where many family relationships are decided by custom and tradition, to now have a law on their books requiring divorces by registered with an official court. These laws may have very little if any adherence in rural villages of the country especially, but both the US Immigration Service and Department of State will require court registration of divorces in these situations.

For citizens of Muslim nations, family relationships are often guided by Sharia Law as much as civil law. Sharia Law is based on rules and practices originating in the words and acts of Muhammad. Sharia Law has been passed down and modified over time, and it may be different in different nations. One common rule though of traditional Sharia Law regarding divorce is that a man may divorce his wife with virtually no limitation but that a woman needs consent of her husband to divorce him. This rule regarding divorce often hinders future US Immigration applications.

US Immigration and Consular Officers appreciate that cultural practices regarding divorce exist globally, but at the same time from a policy perspective the US is very concerned with fraud. Similarly the US needs to ensure a foreign citizen who claims a previous divorce overseas based on performance of a culturally accepted ceremony is not really just trying to easily dump their overseas spouse. For these reasons, Immigration Service and Consular Officers both require very strong evidence of the culturally accepted divorce. And strong evidence needs to be produced to proving the overseas nation allows for culturally accepted divorce, what the relevant culture requires for divorce as well as that the accepted divorce standards were met by the foreign citizen applicant for a US Immigration benefit.

If the foreign citizen is not able to prove all the above, the immigration application will probably be denied. The US Immigration Service or Consular Officer will likely make a determination that the foreign citizen did not prove their first marriage overseas was ever terminated, which in essence amounts to US Immigration or Consular Officer saying that either any subsequent marriage in the US is invalid and/or consists of polygamy.

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