

MATTER OF LWIN

In Visa Petition Proceedings

A-20205803

Decided by Board September 1, 1976

- (1) The United States citizen petitioner applied for immediate relative status for the beneficiary as her spouse under section 201(b) of the Immigration and Nationality Act. The district director denied the petition on the ground that the beneficiary, who had lived with an Indian Christian woman in Burma from 1963 to 1965, had a prior undissolved marriage in Burma, and the petitioner appealed.
- (2) In Burma, a marriage contracted between a Christian and a non-Christian, or between two Christians, must be solemnized in accordance with the requirements of the Christian Marriage Act of 1872. That act requires that for such marriage to be valid it must be solemnized before one of the persons named in the act and be recorded with the Registrar-General of Births, Deaths and Marriages.
- (3) Where the beneficiary denied he had married in Burma, and there was no civil documentation of beneficiary's alleged prior marriage, and the affidavit of beneficiary's father indicates he did not witness or participate in a marriage ceremony in Burma involving the beneficiary, it is concluded that there was no prior marriage in Burma and the marriage on which the instant petition is based is valid for immigration purposes and the petition will be granted.

ON BEHALF OF PETITIONER: Pro se

The United States citizen petitioner applied for immediate relative status for the beneficiary as her spouse under section 201(b) of the Immigration and Nationality Act. In a decision dated November 18, 1975, the District Director denied the petition on the ground that the beneficiary had a prior undissolved marriage in Burma. The petitioner appealed. The appeal will be sustained.

The beneficiary is a male Buddhist, native of Burma. He married the petitioner on May 10, 1974, in Orlando, Florida, after obtaining a divorce from a Florida resident.

The evidence in the record establishes that from 1963 to 1965 the beneficiary lived with an Indian Christian in Burma. From that cohabitation a child was born in 1965. The beneficiary states that he did not marry the mother of his child.

In the record we have an affidavit from the father of the beneficiary stating that the beneficiary did marry the Indian Christian female.

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However, the affiant states that he did not attend any marriage ceremony. The United States Embassy in Rangoon, Burma informs us that there is no civil documentation of the marriage in Burma.

Given the conflicting evidence in the record regarding the applicable law of marriage in Burma, assistance has been requested from the Library of Congress. We have received a memorandum of law dated July 1976 on the applicable law in Burma.

We are informed that in Burma when one or both of the parties are Christians, marriage can be validly contracted only in accordance with the Christian Marriage Act of 1872. This Act requires for a validity of the marriage that it be solemnized before one of the persons named in the Act. The Act further requires that all marriages solemnized in accordance with it be registered with the Registrar-General of Births, Deaths and Marriages.

The evidence in the record indicates that the beneficiary could only have married his purported Burmese wife under the requirements of the Christian Marriage Act of 1872. The beneficiary was steadfast in his denial that he had married in Burma. The Embassy informs us that there is no civil documentation of a marriage by the beneficiary in Burma. The affidavit of the beneficiary's father states that he did not witness or participate in a marriage ceremony of the beneficiary.

We conclude that there was no prior marriage in Burma, and that the beneficiary is the spouse of the United States citizen petitioner. Accordingly, the appeal will be sustained and the visa petition granted.

ORDER: The appeal is sustained and the visa petition granted.

ADDENDUM

THE CHRISTIAN MARRIAGE ACT

(Registration Provisions)

...

4. Every marriage between persons, one or both of whom is or are a Christian or Christians, shall be solemnized in accordance with the provisions of the next following section; and any such marriage solemnized otherwise than in accordance with such provisions shall be void.

5. Marriages may be solemnized in the Union of Burma—

- (1) by any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies, and customs of the Church of which he is a Minister;
- (2) by any Clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites, ceremonies, and customs of the Church of Scotland;

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- (3) by any Minister of religion licensed under this Act to solemnize marriages;
- (4) by, or in the presence of, a Marriage Registrar appointed under this Act;
- (5) by any person licensed under this Act to grant certificates of marriage between native Christians.

...
9. The President of the Union may grant a licence to any Christian, either by name or as holding any office for the time being, authorizing him to grant certificates of marriage between native Christians.

Any such licence may be revoked by the President of the Union and every such grant or revocation shall be notified in the Gazette.

[If any person licensed under this section solemnizes or affects to solemnize any marriage under Part VI or grants any certificate as therein mentioned, knowing that one of the parties to such marriage or affected marriage was at the date of such solemnization not a Christian, he shall be liable to have his licence cancelled, and in addition thereto he shall be deemed to be guilty of an offence under section 73, and shall be punishable according.]

...
27. All marriages hereafter solemnized in the Union of Burma between persons one or both of whom professes or profess the Christian religion, except marriages solemnized under Part V or Part VI of this Act, shall be registered in manner hereinafter prescribed.

...
29. Every clergyman of the Church of England shall send four times in every year returns in duplicate, authenticated by his signature, of the entries in the register of marriages solemnized at any place where he has any spiritual charge, to the Registrar of the Archdeaconry to which he is subject, or within the limits of which such place is situate.

Such quarterly returns shall contain all the entries of marriages contained in the said register from the first day of January to the thirty-first day of March, from the first day of April to the thirtieth day of June, from the first day of July to the thirtieth day of September, and from the first day of October to the thirty-first day of December, of each year respectively, and shall be sent by such clergyman within two weeks from the expiration of each of the quarters above specified.

The said Registrar upon receiving the said returns shall send one copy thereof to the Registrar-General of Births, Deaths and Marriages.

30. Every marriage solemnized by a clergyman of the Church of Rome shall be registered by the person and according to the form directed in that behalf by the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is solemnized, and such person shall forward quarterly to the Registrar-General of Births, Deaths and Marriages returns

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of the entries of all marriages registered by him during the three months next preceding.

31. Every clergyman of the Church of Scotland shall keep a register of marriages, and shall register therein, according to the tabular form set forth in the Third Schedule hereto annexed, every marriage which he solemnizes under this Act, and shall forward quarterly to the Registrar-General of Births, Deaths and Marriages, through the Senior Chaplain of the Church of Scotland, returns, similar to those prescribed in section 29, of all such marriages.

32. Every marriage solemnized by any person who has received episcopal ordination, but who is not a clergyman of the Church of England, or of the Church of Rome, or by any Minister of religion licensed under this Act to solemnize marriages, shall, immediately after the solemnization thereof, be registered in duplicate by the person solemnizing the same; (that is to say) in a marriage register-book to be kept by him for that purpose, according to the form contained in the Fourth Schedule hereto annexed, and also in a certificate attached to the marriage register-book as a counterfoil.

34. The person solemnizing the marriage shall forthwith separate the certificate from the marriage register-book and send it, within one month from the time of the solemnization, to the Marriage Registrar of the district in which the marriage was solemnized, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar, who shall cause such certificate to be copied into a book to be kept by him for that purpose, and shall send all the certificates which he has received during the month, with such number and signature or initials added thereto as are hereinafter required, to the Registrar-General of Births, Deaths and Marriages.

36. The Marriage Registrar shall also add such last-mentioned number of the entry of the copy in the book to the certificate, with his signature or initials, and shall, at the end of every month, send the same to the Registrar-General of Births, Deaths and Marriages.

37. When any marriage between native Christians is solemnized by any such person, clergyman or Minister of religion as is referred to in clause (1), clause (2) or clause (3) of section 5, the person solemnizing the same shall, instead of proceeding in the manner provided by sections 28 to 36, both inclusive, register the marriage in a separate register-book, and shall keep it safely until it is filled, or, if he leave the district in which he solemnized the marriage before the said book is filled, shall make over the same to the person succeeding to his duties in the said district.

Whoever has the control of the book at the time when it is filled shall

send it to the Marriage Registrar of the district, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar, who shall send it to the Registrar-General of Births, Deaths and Marriages, to be kept by him with the records of his office.

PART V.

Marriages solemnized by, or in the presence of, a Marriage Registrar.

38. When a marriage is intended to be solemnized by, or in the presence of, a Marriage Registrar, one of the parties to such marriage shall give notice in writing, in the form contained in the First Schedule hereto annexed, or to the like effect, to any Marriage Registrar of the district within which the parties have dwelt, or, if the parties dwell in different districts, shall give the like notice to a Marriage Registrar of each district, and shall state therein the name and surname, and the profession or condition, of each of the parties intending marriage, the dwelling-place of each of them, the time during which each has dwelt therein, and the place at which the marriage is to be solemnized:

Provided that, if either party has dwelt in the place stated in the notice for more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

55. The Marriage Registrar shall forthwith separate the certificate from the marriage register-book and send it, at the end of every month, to the Registrar-General of Births, Deaths and Marriages.

The Marriage Registrar shall keep safely the said register-book until it is filled, and shall then send it to the Registrar-General of Births, Deaths and Marriages, to be kept by him with the records of his office.

PART VI.

Marriage of native Christians.

62. Every person licensed under section 9 shall keep in English, or in the vernacular language in ordinary use in the district or State in which the marriage was solemnized, and in such form as the President of the Union may from time to time prescribe, a register-book of all marriages solemnized under this Part in his presence, and shall deposit in the office of the Registrar-General of Births, Deaths and Marriages, in such form and at such intervals as the President of the Union may prescribe, true and duly authenticated extracts from his register-book of all entries made therein since the last of those intervals.