

7 FAM 1740 FORCED MARRIAGE OF MINORS

(CT:CON-102; 02-27-2005)
(Office of Origin: CA/OCs/PRI)

7 FAM 1741 INTRODUCTION

(CT:CON-102; 02-27-2005)

- a. The issue of forced marriages involves more than just child victims, and is therefore covered in detail in 7 FAM 1400. Most cases of forced marriage involve young women and girls aged between 13 and 30 years, although there is evidence to suggest that as many as 15 per cent of victims are male. In a number of instances, the non-consenting partner is also a child, which adds another dimension to the issue. The Department considers a forced marriage to be a violation of basic human rights. It also considers the forced marriage of a minor child to be a form of child abuse, since the child will presumably be subjected to non-consensual sex. Cases involving U.S. citizen/national children that come to your attention cannot be disregarded, or simply referred back to the parents. You must take all possible steps to protect the U.S. citizen/national child in these cases.
- b. The issue of forced marriage is addressed in the annual Human Rights Reports.
- c. Some countries have issued travel advice and other reports regarding forced marriage.

7 FAM 1742 AUTHORITIES

(CT:CON-102; 02-27-2005)

- a. Consular authority for protection of minors is derived from a variety of treaties, laws, and regulations.
 - (1) **TREATIES.** See Treaties in Force on the Department of State Internet page to confirm whether a particular multilateral or bilateral treaty is in force between the United States and the host country.

- (a) Vienna Convention on Consular Relations (VCCR). Article 5(h) and of the VCCR provides that consular functions include protection of the interests of minors of the sending State.

Article 5(h) Vienna Convention on Consular Relations

Consular functions include ...

“(h) safeguarding, within the limits imposed by the laws and regulations of the receiving State, the **interests of minors** and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons.”

Article 37 of the VCCR concerns host country responsibilities in the event cases of guardianship or trusteeship.

Article 37 VCCR

“If the relevant information is available to the competent authorities of the receiving State, such authorities shall have the duty:

(b) to inform the competent consular post without delay of any case where the appointment of a guardian or trustee appears to be in the interests of a minor or other person lacking full capacity who is a national of the sending State. The giving of this information shall, however, be without prejudice to the operation of the laws and regulations of the receiving State concerning such appointments.”

- (b) **Bilateral Consular Conventions.** See the CA/OCS Intranet page treaties feature for information about bilateral consular conventions. Check Treaties in Force on the Department of State Internet page to confirm the status of a particular treaty.

(2) **Laws and Regulations.**

- (a) 22 CFR 71.1 Protection of Americans Abroad;
(b) 22 CFR 71.6 Services for Distressed Americans; and
(c) 22 U.S.C. 1731 Protection to Naturalized Citizens Abroad.

- b. **Authorities Governing Marriage.** See 7 FAM 1400. Marriage is generally a matter reserved for the law of the place where the marriage is

performed. State laws in the United States pertain to emancipation of minors, either by a court, or by marriage. See Laws of the Fifty States, District of Columbia and Puerto Rico Governing Emancipation of Minors. See also Marriage Laws of the Fifty States, District of Columbia and Puerto Rico.

- c. There are several international instruments concerning marriage. See Treaties in Force on the Department of State Internet home page to confirm which agreements are in force between the United States and the host country. International instruments concerning marriage include:
- (1) **Universal Declaration of Human Rights 1948 (UDHR)**
 - “Article 16(2) Marriage shall be entered into only with the free and full consent of the intending spouses.”
 - (2) **International Covenant on Civil and Political Rights**
 - “Article 28 3. No marriage shall be entered into without the free and full consent of the intending spouses”.
 - (3) **Declaration on Elimination of Discrimination Against Women**
 - **“Article 6, 3. Child marriage and the betrothal of young girls before puberty shall be prohibited, and effective action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.”**
 - (4) **Convention on Consent to Minimum Age for Marriage and Registration of Marriages (1962)**
 - (5) **U.N. Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration (1965) (non-binding resolution)**

7 FAM 1743 ARRANGED VS FORCED MARRIAGES

(CT:CON-102; 02-27-2005)

Arranged marriages have been a long-standing tradition in many cultures and countries. The Department respects this tradition, and makes a very clear distinction between a forced marriage and an arranged marriage. In arranged marriages, the families of both spouses take a leading role in

arranging the marriage but the choice whether to accept the arrangement remains with the individuals.

7 FAM 1743.1 Forced Marriages

(CT:CON-102; 02-27-2005)

- a. In a forced marriage, at least one party does not consent or is unable to give informed consent to the marriage, and some element of duress is generally present. While forced marriages are known to occur worldwide, they are more prevalent in some countries and within some cultural and religious groups. If there is a cultural bias or a history of forced marriages in your district, you should be prepared to take appropriate action on these cases when U.S. citizen/national children are involved.
- b. Cases may come to your attention in several ways, including:
 - (1) A child, or a concerned relative or friend, may contact CA/OCS/ACS and express the concern that an upcoming family trip, perhaps billed as a vacation, is actually designed to force him or her into a marriage abroad. The OCS officer will generally explain the difficulties and try to persuade the minor not to travel abroad. Often, however, due to family and social pressures, they will go anyway, usually hoping they were wrong, or that they can talk their parents out of the marriage. The case officer will advise the minor to contact post as soon as possible upon arrival, and to stay in touch during the visit. The case officer in turn will cable or e-mail you with the facts of the case, and alert you to a probable call from the minor.
 - (2) Less often, a minor may contact post directly, and state that he or she is about to travel abroad, and has reason to fear that the trip is a ruse to enter him or her into a forced marriage. In this case, you should play much the same counseling role as an OCS Officer in the Department, and try to cover the following points:
 - (a) He or she has a basic right not to be forced into marriage.
 - (b) Carefully explain the options available:
 - Travel as planned, and either hope he or she is mistaken, or that he or she can convince the parents or even the prospective bride/groom that the marriage should not take place. These are both potentially very high-risk suppositions.
 - Accede to his or her parents' demands, and consent to the

marriage.

- Do not make the trip, even if this means leaving the family for a safe haven in the United States. This may be the best alternative.
- (c) Explain how laws and practices in the host country may make his or her situation much worse once he or she leaves the United States.
- (d) Try to identify the basis for his or her concerns. These could include a known prior agreement, the forced marriage of a sibling, etc.
- (e) Ask him or her to call OCS/ACS in the Department. They in turn will help him or her with referrals to local social service agencies that can assist.
- (f) Instruct him or her to contact the post upon arrival if he or she insists on making the trip, but again caution him or her that your ability to assist may be very limited once he or she arrives in country.
- (g) Advise the Department (CA/OCS/ACS) of the call, and the facts of the case.

7 FAM 1743.2 A Married Minor In Country

(CT:CON-102; 02-27-2005)

A minor may approach the post for assistance at some point after the forced marriage has occurred. Your efforts on his or her behalf might include:

- (1) Determining whether a forced marriage is illegal in the host country, and if the laws are enforced. If such is the case, offer to contact local authorities on his or her behalf. Explain that this may require him or her to file criminal charges against his or her spouse, parents, or others, and could prolong his or her stay in country;
- (2) Asking if there are relatives or friends in the U.S. who would be sympathetic and could assist with travel funds and a safe haven in the U.S. Offering to contact, or help him or her contact these individuals and arranging for a transfer of funds either commercially or through the OCS Trust procedure (see 7 FAM 300);
- (3) Verifying nationality and identity, and issuing a replacement

passport if necessary. Note that as a married person, the minor is emancipated, and parental or spousal consent to passport issuance is not required. Consult the Department (CA/OCS) as appropriate;

- (4) If the minor has no funds for travel, and if other private funds are not available, issuing a repatriation loan. The Department may advise that the consular officer co-sign the loan application “without recourse” for the minor. See 7 FAM 380. CA/OCS will provide an advisory opinion on a case by case basis;
- (5) If there is no family or friends in the US to whom the minor can return, working with CA/OCS/ACS to arrange for an appropriate reception and placement by HHS/ACF/ORR’s contractor International Social Services (ISS-USA); and
- (6) If the host country requires the consent of the husband in order for a wife to leave the country, the situation obviously becomes more complex. You should:
 - (a) Advise the minor of the requirements for an exit visa;
 - (b) Offer to assist the minor in obtaining permission to leave, but caution that it may not be possible to do so without the spouse learning of the attempt;
 - (c) Vigorously pursue host government consent for child to leave;
 - (d) Keep the Department apprised; and
 - (e) See 7 FAM 180 Refuge.

7 FAM 1743.3 An Unmarried Minor In Country

(CT:CON-102; 02-27-2005)

A U.S. citizen/national minor may approach post and state that he or she is being forced into marriage. Your efforts on his or her behalf might include:

- (1) Determining whether a forced marriage is illegal in the host country, and if the laws are enforced. If so, offer to contact local authorities on his or her behalf. Explain that this may require him or her to file charges against his or her parents or proposed husband, and possibly delay his or her return to the United States;
- (2) The legal status of a child in these circumstances is not clear;
- (3) If elements of child abuse or neglect are also evident in the case,

- providing appropriate assistance as outlined in 7 FAM 1720;
- (4) In all such cases, you should consult with the Department before taking any action to issue documentation or assist in repatriation; and
 - (5) See 7 FAM 180 Refuge.

7 FAM 1744 THOROUGH 1749 UNASSIGNED