

Federal Court		Cour fédérale
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**Date: 20100311**

**Docket: IMM-3676-09**

**Citation: 2010 FC 286**

**Toronto, Ontario, March 11, 2010**

**PRESENT: The Honourable Mr. Justice Hughes**

**BETWEEN:**

**ANUSHA BRIDGET MANUVELPILLAI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This application raises an issue of law that does not appear to have been dealt with previously. As such, I have decided the issue to my satisfaction and have certified a question should either party seek a determination in a higher court.

[2] The question simply put is, whether a person legally married outside Canada who has come to Canada and subsequently receives a divorce from an appropriate court of the Canadian province in which they reside, must also secure a divorce from the country in which they were married before they can sponsor the new spouse who is resident outside Canada to enter Canada as an applicant for permanent residence in Canada.

[3] The facts of the present case can be reduced to these. The Applicant, an adult woman was a citizen of Sri Lanka. She intended to marry a man who was a lawful landed immigrant resident in Canada. This man travelled to Sri Lanka where he and the Applicant engaged in a ceremony in a church including an exchange of rings. The evidence is equivocal as to whether the ceremony was “registered” as a marriage in Sri Lanka. The Board seems to have found that it was. In any event the Applicant and this man came to Canada, in particular, Ontario, where, within ninety days, a marriage ceremony took place and the marriage was “registered” in Ontario. Some time goes by, there is a falling out between the two spouses. They divorced. An appropriate order of divorce was granted by the appropriate Ontario court.

[4] The Applicant remarried a man who is a citizen of Sri Lanka. She seeks to sponsor him so that he may obtain a permanent resident visa and enter Canada as a member of the family class namely as her husband. This application was refused and comes before the Immigration and Refugee Board. The Board concluded that the Applicant’s first marriage had taken place in Sri Lanka and since it was not “dissolved” in Sri Lanka she could not sponsor a second husband.

[5] The Board does not state any basis for its determination as to why a dissolution of the first marriage had to be obtained in Sri Lanka. It does not state why it would not consider the Ontario divorce adequate to terminate the marriage. The Respondent's Counsel, who I must commend as being very frank and helpful, as was Applicant's Counsel, suggested (but it nowhere appears on the reasons or elsewhere) that the Board may have had regard to the definition of "marriage" as set out in section 2 of the *Immigration and Refugee Protection Regulations*, SOR/2001-227 as amended:

*"marriage", in respect of a marriage that took place outside Canada, means a marriage that is valid both under the laws of the jurisdiction where it took place and under Canadian law.*  
(*"mariage"*)

[6] This definition is not helpful in determining the issue here. We can for present purposes, accept that the Applicant was first married in Sri Lanka and that the marriage was valid there and here. The question we have to deal with is whether the Ontario divorce effectively dissolves the marriage even if performed in Sri Lanka.

[7] Justice Barnes of this Court recently dealt with an issue respecting a marriage and subsequent divorce both of which took place in Pakistan in *Amin v. Canada (M.C.I.)*, 2008 FC 168. In that case Barnes J. held that the legal requirements for a valid Pakistan divorce had not been met, therefore the divorce was not valid and a second spouse could not be sponsored to enter Canada. That is not the issue in the present case where we are faced with an Ontario Court decree of divorce, the validity of which nobody has questioned. The issue is whether, in addition, a Sri Lankan divorce is required.

[8] Section 3(1) of the *Divorce Act*, R.S.C. 1985, c.3 (2<sup>nd</sup> Supp.) gives jurisdiction to an appropriate court in Canada to hear and determine a divorce proceeding if either spouse has been ordinarily resident in the relevant province for at least the past year:

***Jurisdiction in divorce proceedings***

**3. (1)** *A court in a province has jurisdiction to hear and determine a divorce proceeding if either spouse has been ordinarily resident in the province for at least one year immediately preceding the commencement of the proceeding.*

***Compétence dans le cas d'un divorce***

**3. (1)** *Dans le cas d'une action en divorce, a compétence pour instruire l'affaire et en décider le tribunal de la province où l'un des époux a résidé habituellement pendant au moins l'année précédant l'introduction de l'instance.*

[9] Section 12(8) of that *Act* provides that a certificate of divorce is conclusive proof of the facts (e.g. the divorce) so certified:

***Conclusive proof***

**12(8)** *A certificate referred to in subsection (7), or a certified copy thereof, is conclusive proof of the facts so certified without proof of the signature or authority of the person appearing to have signed the certificate.*

***Preuve concluante***

**12(8)** *Le certificat visé au paragraphe (7) ou une copie certifiée conforme fait foi de son contenu sans qu'il soit nécessaire de prouver l'authenticité de la signature qui y est apposée ou la qualité officielle du signataire.*

[10] Section 13 of that *Act* provides that a divorce has legal effect throughout Canada:

***Legal effect throughout  
Canada***

*13 On taking effect, a  
divorce granted under this Act  
has legal effect throughout  
Canada*

***Validité du divorce dans  
tout le Canada***

*13 À sa prise d'effet, le  
divorce accordé en  
application de la présente  
loi est valide dans tout le  
Canada.*

[11] The *Divorce Act* does not restrict the appropriate Canadian Court from granting a divorce only in respect of marriages performed in Canada. Once a divorce has been granted it is effective throughout Canada, including, I find, for purposes of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 as amended.

[12] The Board, therefore, was in error in not finding that the Applicant's first marriage had been terminated by the divorce.

[13] There are ancillary issues in this case. One is whether the Board, during the hearing, had made a determination as to the validity of the divorce thus precluding further argument on the point. Having reviewed the transcript I find that the Board did not say that it had made such determination. The other issue is whether the Applicant's evidence was that the first marriage "registered" in Sri Lanka. The Board found that this was her evidence. I find that to be immaterial.

[14] I will therefore allow the application and refer the matter back for re-determination by a different Board Member who should be mindful that the Ontario divorce of the first marriage was fully effective. I will certify a question as to that issue.

**JUDGMENT**

For the reasons provided:

**THIS COURT ORDERS AND ADJUDGES that:**

1. The application is allowed;
2. The matter is sent back for re-determination by a different Member;
3. The following question is certified:

*Whether a person legally married outside Canada who has come to Canada and subsequently receives a divorce from an appropriate court of the Canadian province in which they reside, must also secure a divorce from the country in which they were married before they can sponsor the new spouse who is resident outside Canada to enter Canada as an applicant for permanent residence in Canada.*

4. No Order as to costs.

"Roger T. Hughes"  
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Judge