**U.S. Department of Justice**
Executive Office for Immigration Review

Falls Church, Virginia 22041


Decision of the Board of Immigration Appeals

File: A70 909 147 - New York

Date: MAY 1 8 2006

In re: [redacted] Beneficiary of a visa petition filed by [redacted] Petitioner

IN VISA PETITION PROCEEDINGS

APPEAL

ON BEHALF OF PETITIONER: Alan Lee, Esquire

ON BEHALF OF DHS: Jason Raphael
Associate Regional Counsel

APPLICATION: Petition to classify status of alien relative for issuance of immigrant visa

On July 18, 2005, the district director from the Department of Homeland Security denied the petitioner's visa petition. The petitioner has appealed. The appeal will be sustained and the visa petition will be approved.

The facts of this case are not in dispute. The beneficiary is a native and citizen of the People's Republic of China. In September 1986 the beneficiary married [redacted] Yang, also a Chinese national in China. They lived in China as husband and wife until the beneficiary came to the United States in 1992, and [redacted] Yang came to the United States in 1994. The record reflects that the beneficiary and [redacted] Yang obtained a Chinese divorce on November 11, 1995, by the People's Court of Yu Zhong District, Chong Qing City, China. The beneficiary and [redacted] Yang never physically appeared before the court in China, but were both represented by relatives. The beneficiary married the petitioner on July 24, 2000, in New York City, New York.[1] The validity of the petitioner's marriage to the beneficiary is determined according to the law of New York State because that is where the marriage was celebrated. Therefore, the validity of the petitioner's marriage to the beneficiary depends upon whether New York would recognize the Chinese divorce purporting to terminate the beneficiary's prior marriage to Mingli Yang. *See Matter of Lovo-Lara*, 23 I&N Dec. 746, 748 (BIA 2005); *Matter of Hosseinian*, 19 I&N Dec. 453, 455 (BIA 1987).

The district director found that the beneficiary's divorce from his first wife was not valid because both of the parties were residing in New York and had not entered a physical appearance before the Chinese divorce court. The district director relies upon *Matter of Luna*, 18 I&N Dec.385, 386 (BIA 1983), for the proposition that there must be some physical presence on the part of at least one party within the jurisdiction of the court rendering the divorce, and some type of appearance or submission to jurisdiction by the other party. However, in *Matter of Ma*, 15 I&N Dec. 70, 72 (BIA 1974), the Board cited caselaw from New York and observed that substantial contacts with the divorcing jurisdiction were established when (1) the parties were married in the jurisdiction where they were subsequently divorced; (2) they lived in that jurisdiction as husband and wife for a period of time;

[1] The petitioner also obtained a divorce from a prior spouse, but that divorce has been determined to be valid.

(3) although they were not personally before the divorcing court or even within the jurisdiction at the time of the divorce, both partes had notice of the action and either appeared by counsel or consented to personal jurisdiction; and (4) both parties to the divorce were citizens of the country granting the divorce. *In accord, Matter of Assan*, 15 I&N Dec. 218 (BIA 1975) (beneficiary and former spouse both natives and citizens of Ecuador, but neither appeared personally at divorce proceedings, yet divorce recognized as valid under New York law); *Matter of Koehne*, 10 I&N Dec. 264 (BIA 1963) (Hungarian in absentia divorce recognized as valid under New York law).

In the instant case (1) the beneficiary and his first wife were married in China where they were subsequently divorced; (2) the beneficiary and his first wife lived in China as husband and wife for a period of time, in fact the couple had a child who was born in China on May 20, 1990; (3) although the beneficiary and his first wife were not personally before the divorcing court or even within the jurisdiction at the time of the divorce, both parties had notice of the action and consented to personal jurisdiction; and (4) the beneficiary and his first wife are natives and citizens of China. Under New York law the beneficiary's divorce would be recognized as valid. *Id.* The district director conceded that the divorcing parties brought their paperwork to the Chinese Consulate General in New York and followed standard procedures required by the People's Republic of China. However, the district director contends that this is not the same as having made a physical presence in China at the time of the divorce. The district director cited *Matter of Hassan*, 16 I&N Dec. 10 (BIA 1976), for the proposition that a divorce obtained at the Egyptian Consulate in New York was not recognized under New York law. *Matter of Hassan* is inapposite here since the instant case does not involve a consular divorce.

Upon review, we find that the petitioner has met her burden of establishing the beneficiary's eligibility for the immigration benefit sought.

ORDER: The appeal is sustained and the visa petition is approved, and the district director's July 18, 2005, decision is vacated.

FOR THE BOARD