DOJ ISSUANCES

DOJ OPINION NO. 011, s. 2019
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Facts

This DOJ Opinion was issued in reference to the requests for opinion by the Office of the Undersecretary for Civilian Security and Consular Concerns and the Office of Consular Affairs of the Department of Foreign Affairs ("DFA").

The request for opinion pertains to DFA's receipt of requests from diplomatic missions and international organizations based in the Philippines for the issuance of diplomatic 9(e-1) visas to the same-sex spouses or partners of foreign government officials assigned to the country. On the other hand, the request for opinion by the Office of Consular Affairs pertains to DFA's receipt of requests from diplomatic missions and international organizations based in the Philippines for the issuance of diplomatic 9(e-1) visas to the common law spouses or partners of foreign government officials assigned to the country.

At issue is **whether the Philippines can consider these spouses or partners as the legal spouses of said foreign government officials, for the purpose of issuance to them of diplomatic 9(e-1) visas under Section 81 (n) of the Codified Visa Rules and Regulations of 2002 (CVRR), in relation to the Philippine Immigration Act of 1940, as amended.**

The DOJ concluded that that if the marriage of a foreign government official assigned to the country and his or her foreign same-sex spouse is considered valid in the place where it was celebrated (lex loci celebrationis) and said spouses are also considered validly married under their laws of nationality (lex nationalii) or domicile (lex domicilii), a diplomatic 9(e-1) visa under Section 81 (n) of the CVRR may be issued to the foreign same-sex spouse of the said foreign government official. However, in view of the lack of a marriage bond between a foreign government official and his or her informal same-sex partner or common-law spouse or partner, a diplomatic 9(e-1) visa under Section 81 (n) of the CVRR may not be issued to such partner or spouses.

RULING

It appears from both requests for opinion that DFA issues to the same-sex spouses or partners and common law spouses or partners of foreign government officials assigned to the country diplomatic 9(e-3) visas "as they are considered household members of such officials entitled to 9(e-3) visas under the Codified Visa Rules and Regulations ("CVRR") of 2002, which emanated from the Philippine Immigration Act of 1940, as amended;' and that, however, a number of diplomatic missions and international organizations have asked for the issuance of diplomatic 9(e-1) visas, which DFA only issues to officials specifically listed in Section 81 of the CVRR and "accompanying wives and unmarried minor children."

It also appears from the request for opinion of the Office of the Undersecretary for Civilian Security and Consular Concerns that the United Nations ("UN") Secretary-General promulgated bulletin ST/SGB/2004/ 13/Rev.1 dated June 26 , 2014, which states that "[t]he personal status of staff members for the purpose of entitlements under the Staff Rules and Staff Regulations of the UN will be determined by reference to the law of the competent authority under which the personal status has been established."

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The Philippines follows the **nationality principle (lex nationalii)** in the determination of status of a person, whether a Filipino or an alien. Article 15 of the Civil Code provides that "[l]aws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad."

In case of aliens, Philippine courts may also refer to the law of their domicile (lex domicilii), if they belong to a country that follows the domiciliary principle.

We note that the abovementioned **UN Secretary-General's Bulletin No. ST/SGB/2004/13/Rev.1**, which provides that personal status "will be determined by reference to the law of the competent authority under which the personal status has been established" is in line with Article 15 of our Civil Code. Hence, whether or not a foreign government official assigned to the Philippines is considered married is determined by the law of his or her nationality (lex nationalii) or the law of his or her domicile (lex domicilii), and not by Philippine law.

Aside from Article 15 of the Civil Code, Article 26 of the Family Code is also relevant to the issue at hand. It deals with the validity of marriages celebrated outside the Philippines. A pertinent portion of said Article reads as follows: **All marriages solemnized outside the Philippines, in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country**, except those prohibited under Articles 35(1), (4), (5) and (6), 36, 37 and 38.

Pursuant to the above-quoted Article, the Philippines follows the **principle of lex loci celebrationis** with respect to the validity of marriages celebrated abroad, i.e., a marriage that is valid where it was celebrated would also be recognized as valid here in the Philippines. This principle is subject to certain exceptions, as specified in the said Article, such as if the marriage is considered incestuous or void by reason of public policy. These exceptions apply only to marriages solemnized abroad between Filipinos, and not to marriages solemnized outside the Philippines between aliens, such as between foreign government officials assigned to the Philippines and their foreign same-sex spouses. With respect to the latter, the validity of their marriages solemnized outside the Philippines is governed principally by the principle of lex loci celebrationis. The only instance when the validity of their marriages will not be recognized here in the Philippines is when their marriages are considered universally incestuous or highly immoral, based on the writings of distinguished authors on conflict of laws.

For your reference we quote hereunder the views of these distinguished authors on conflict of laws.

According to Sempio-Diy, with respect to marriages between foreigners solemnized abroad, "[w]**e still apply the rule of lex loci celebrationis , but not the exceptions in the first par. of Art. 26 of the Family Code, which apply only to Filipinos**. But universally considered incestuous marriages are excepted; i.e., marriages between ascendants and descendants, and brothers and sisters; and marriages that are highly immoral (bigamous or polygamous marriages in Christian countries that prohibit such marriage)." (emphasis supplied)

According to Paras, "[if] the marriage between foreigners is celebrated validly abroad, the same will be recognized as valid here (in accordance with the principle of lex loci celebrationis), provided that it is not highly immoral (bigamous, polygamous, etc.) and provided it is not UNIVERSALLY considered incestuous." He gave the following example to illustrate the principle as applied to foreigners married abroad:

> A marriage in California between American first cousins will be recognized as valid here if valid in the place of celebration because it is neither immoral nor universally considered incestuous. **It is true that were we to apply Art. 26 of the Family Code, it would be 'incestuous' [under] Philippine law but then Art. 26 applies only to Filipinos, not to foreigners (despite the lack of express distinction in the law), otherwise it is as if our Family Code were to rule the world.**
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Lastly, Coquia and Pangalangan also explained in this wise why the Philippines should recognize the validity of marriages of foreigners solemnized abroad:

> . . . Many countries do not consider marriage of first cousins as incestuous. x x x It is submitted that our prohibition against marriage of first cousins should be limited only to Filipino nationals. The marriage between foreigners whose national laws allow marriage of first cousins should be considered as valid in the Philippines **under the principle that the lex nationalii control capacity** and the presumption in favor of validity of marriage, as expressed in Article 220 of the Civil Code.

The above principles and explanations of the pertinent provisions of the Civil Code and the Family Code can apply to the recognition by relevant Philippine authorities of the validity of same-sex marriages solemnized abroad between foreigners, or in this case, between foreign government officials assigned to the country and their foreign same-sex spouses.

We note that same-sex marriages are valid in several countries around the world and may not, therefore, be considered to be universally immoral. Hence, same-sex marriages solemnized abroad between foreigners that are considered valid in the country where the marriages are solemnized may be recognized as valid here in the Philippines on the basis of Article 26 of the Family Code (lex loci celebrationis). The personal status of said foreigners as married may also be

recognized here in the Philippines pursuant to Article 15 of the Civil Code (lex nationalii or domicilii).

One consequence of such recognition is the issuance of appropriate visas to the same-sex spouses of foreign government officials assigned to the country, such as diplomatic 9(e-1) visas under the CVRR, and their enjoyment of the relevant privileges and immunities under the Vienna Convention on Diplomatic Relations. The other consequences of such recognition, such as the exercise of civil rights of guardianship, stepchild adoption and joint adoption of Filipino child and commercial surrogacy, are governed by the pertinent prohibitions of Philippine law in order to prevent serious injury to public interest.

It has to be emphasized that the discussion above pertains to the recognition of the validity of the marriages solemnized outside the Philippines between foreign government officials assigned to the Philippines and their foreign same-sex spouses, as well as their personal status as being married to one another, such that **these foreign same-sex spouses may be considered the "accompanying wives [or husbands]" of such foreign government offiicials under Section 81 (n) of the CVRR.**

With respect to informal same-sex partners as well as common-law spouses or partners of foreign government officials assigned to the Philippines, in view of the fact that there is no marriage bond between them, the same recognition cannot be given to these spouses or partners as they may not be considered the "accompanying wives [or husbands]" of such foreign government officials under the aforesaid Section 81 (n) of the CVRR.

In sum, it is our opinion that if the marriage of a foreign government official assigned to the country and his or her foreign same-sex spouse is considered valid in the place where it was celebrated (lex loci celebrationis) and said spouses are also considered validly married under their laws of nationality (lex nationalii) or domicile (lex domicilii), a diplomatic 9(e-1) visa under Section 81 (n) of the CVRR may be issued to the foreign same-sex spouse of the said foreign government official. On the other hand, in view of the lack of a marriage bond between a foreign government official and his or her informal same-sex partner or common-law spouse or partner, a diplomatic 9(e-1) visa under Section 81 (n) of the CVRR may not be issued to such partner or spouses.