

# DIVORCE AND CHILD CUSTODY ISSUES IN

## INTERNATIONAL CASES IN JAPAN

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### 1. Forward

Many couples have had successful international marriages. I personally am not opposed to international marriages. However, it is those people who are facing problems related to unsuccessful international marriages that seek the counsel of attorneys. Those international marriages that I see and that I will talk about today are from the "unsuccessful" category.

### 2. History of International Marriage in Japan

#### (a) "Prehistory" of International Marriage in Japan

- Marriage of foreign males residing in Japan and Japanese females
- Marriage of Japanese emigrant males residing overseas and Japanese females
- War Brides
- Marriage of U.S. military personnel stationed in Japan and Japanese females

#### (b) Regularization of international marriage since the 1980s: Japanese men make their debut on the state of international marriages at this point.

- "Farming Village Brides" -- initially these brides came from Korea, however the recent focus of "recruitment" activities has shifted to the Philippines, Northeast China, and other less developed countries.
- "Bar" Marriages -- marriages between foreign females working as bar "hostesses" who have come to Japan on "entertainer" visas or have overstayed their short-term visas, and male patrons of the establishment where they work. This pattern has become increasingly prevalent since the 1980s.
- "Foreign Student" Marriages -- fearing overstay sanctions, foreign students who have finished their studies but are unable to obtain an alternative visa status often rush into marriage using the services of international marriage "introduction agencies". This phenomenon developed due to the large inflow of students into Japanese language schools in 1988. Accordingly, the number of these marriages peaked between 1990 and 1992; it is presently on the decline.

### 3. Reasons for Divorce (especially those given by foreign women)

#### (a) Common factors

- Husband's income is unstable
- Husband has stable income but uses it himself, without contributing significantly to household expenses
- Husband refuses to give control over household finances to wife, e.g., handing her a 1000 yen bill each time she goes shopping
- Physical violence perpetrated by the husband against the wife; e.g., scalding with boiling water, fractured cheekbones, broken ribs, etc.
- Physical violence perpetrated by the husband against the children; e.g., burning with cigarettes, dowsing with cold water, etc.
- Husband's extramarital affairs; characterized by husband's total lack of remorse even when wife becomes aware of the affair (in this case, typically the man has an affair with another foreign woman who is younger than the wife and who is in a weak position or a desperate situation)

- Husband left home, or kicked the wife and children out of the house

(b) Factors typical in "farming village" marriages

- Problems between wife and husband's mother
- Husband unable to side with wife in conflicts with husband's mother

(c) Cases where a mutual agreement of divorce has been filed without the woman's consent or knowledge are also not uncommon. Note, however, that this can result in criminal charges related to the fraudulent entry of a notarial document.)

#### **4. Barriers to bringing a divorce suit**

(a) Residency status

Unquestionably, residency status has been the number one problem in divorce suits. Regardless of the circumstances, the Immigration Bureau will not issue residency status as the "Dependent of a Japanese Citizen" without proof that the wife is living with her husband; also required are a letter of guarantee written by the husband, proof of the husband's employment, and a certificate of tax payment. As a result, the wife's visa may expire during the divorce litigation.

In many cases, the husband is aware of this situation and agrees to provide the necessary documents to renew the visa on a one-time basis, in exchange for the wife's agreement to divorce.

If certain conditions are met, however, it is now possible to get extensions on short-term visas and "Dependent" visas, or to apply for permanent residency status.

(b) Establishment of basic standard of living

- Procurement of housing
- Procurement of living expenses
- Children's schooling and medical care

As regards the latter point, note that if the children are Japanese citizens, the wife can receive welfare payments. Additionally, if the wife obtains the Residency Status referred to in point 2, she personally may qualify for welfare. Accordingly, the most important problem at the present time relates to the improvement of emergency aid, including assistance in applying for official government welfare. The government is not offering any assistance in this area; in fact, there are plans to actually make cutbacks in the number of women's counseling centers. This problem has been left chiefly to private organizations.

There are only four such shelters in all of Japan: HELP (Tokyo); Mizura (Kanagawa Pref.); SaaRaa (Kanagawa Pref.); and Cosmos (Chiba Pref.).

(c) There are only limited ways to explain how to overcome these barriers to potential plaintiffs. Women who manage to escape to the shelters mentioned above generally receive the relevant information, as discussed in points 5 and 6 below. Those who don't manage to get to a shelter generally remain uninformed.

#### **5. Foreign Women's Prospects for Success in Divorce Actions**

(a) Divorce is virtually always granted. Reasons are as follows:

- In many cases, the husband also wants to split up.
- In many cases, the husband is clearly at fault.
- In many cases, the marriage is clearly broken.
- Judges would be disgusted by many of the husbands in these cases.

(b) In most cases, foreign wives also get custody of the children. Reasons are as follows:

- Most of the Japanese husbands lack confidence related to the rearing of children.
- Practically speaking, the situation is not such that the husband is able to rear the children.

Where the husband's mother does not become involved, there is generally no conflict regarding custody.

Where there is a custody conflict, Japanese courts tend to hold the following:

- young children need their mother more than anything
- children should be raised by the parent with whom they can live with the fewest problems

(c) Financial Prospects Limited

- Court awards compensation but the husband does not have the capacity to pay.
- Court awards child support; husband stops paying after a few months.

A system should definitely be established to allow for the garnishment of a portion of wages for child support.

Where a woman has a financial agreement with her ex-husband, it becomes more difficult for her to receive welfare and other social benefits available to single-mother households. As such, where he acts in bad faith and does not meet his obligations, she is forced to quickly abandon the financial arrangement.

## **6. Life after divorce**

(a) Residency status

According to a government directive issued on July 30, 1996, with virtually no exceptions, foreigners who have custody of their legitimate children of Japanese nationality and who are actually raising those children in Japan, may receive permanent resident status.

- in all other cases, foreign divorcees do not, as a general rule, qualify for residency
- a serious problem exists where mothers who have children from a previous relationship are deported.

(b) Life support

Mothers who qualify for residency status may receive all social welfare benefits discussed in point 2. It can truly be said that the visa is a life saver in these cases.

## **7. Cases where mothers do not receive residency status**

As the theme of this discussion is "international marriage", I will have to go into the details of this at another time. However, as a result of the major reforms mentioned in 6(a) the most serious problem at this time is not single mothers who are divorced, but single mothers who have had children without marrying.

In other words,

(a) Where a woman has become pregnant as a result of relations with a Japanese male who has traveled overseas, the chances of the child receiving residency status and aid--originally zero--are improving very slightly.

(b) Illegitimate children born to Japanese males who are already married have a chance of receiving residency status as a result of the government directive of July 30, 1996, which allows for a special residency status. At the present time, as it is not impossible to acquire official residency status, this is an area where rapid action should be taken.

(c) At the present time, there is not much to be done in the case of a child born to foreign parents who do not have residency status. In the past, it was impossible to receive even emergency medical care, childbirth support, children's medical care, mental health care, treatment for tuberculosis and vaccinations, regardless of residency status. Even now, government agencies are often misinformed regarding this issue and turn down such requests.

The number of children in this category who are attending Japanese elementary schools is on the rise. Other than education, they are totally alienated from receiving any kind of social aid.

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