

Annulments can get messy if you sponsored citizenship

By Cara L. Boroda

You attended the wedding; a beautiful affair that epitomized the quintessential newlywed, happy, loving couple as they walked down the aisle. They posted their photos all over social media; it looked lovely. You, the bride's close friend and confidante, receive the call only two months following her big day: She made a mistake, she says. It's over.

Now, she wants out. Not just out of the marriage, but also out of being her spouse's sponsor for immigration. He's not from the U.S., but she believed in her future with him and thought it was not a big deal to execute the affidavit of support, agreeing to be his sponsor for immigration. She entered into a contract with the U.S. government to use her financial resources to support him.

She asks you about an annulment, because it's only been two months. There are no children, no real property, they didn't even share a bank

account. She even confides in you and tells you they did not consummate the marriage.

This should be an easy situation, just some paperwork, and the mistake will only be a memory, right? Wrong. There is no easy way of annulling a marriage; and there is no way avoid a sponsorship obligation for U.S. citizenship, even if the marriage was annulled.

An annulment is a legal proceeding to nullify the marriage. It is conducted on the theory that the marriage should be voided because, at the time of the marriage, no valid marriage ever occurred. Family Code Section 2200 et seq.

There are several reasons a marriage may be annulled, some of which are factually easy to prove, like incest, bigamy or a party being under the age of consent during the marriage. Other reasons might be harder to prove: If the marriage is invalid from its inception due to problems following statutory formalization procedures, such as irregularities concerning the licensing,

solemnization and authentication of the marriage. Family Code Section 306. However, one of the most difficult reasons to annul a marriage is the one that may be the most common — that the marriage was induced by fraud.

Your friend's predicament typifies a fraud situation when a person falls, or thinks they fall, in love then realizes that her spouse is not who she thought. Perhaps he lied about his business, misrepresented his wealth, embellished his desire to have children, or omitted important facts about his sexual health. Or perhaps it was all a charade to obtain his citizenship. Regardless of the fundamental reason that underlies the alleged fraud at the inception of the marriage, to prove this fraud will be a costly, invasive and even humiliating process to garner the admissible evidence that would support an annulment granted by the court. To add insult to injury, because she sponsored her spouse for U.S. citizenship, your friend faces a problem that may last much longer than her

very short-term marriage.

The law in California has long been that a marriage annulment may be granted upon the premise of fraud in only extreme cases, where the particular fraud goes "to the very essence of the marriage." See *Marriage of Meagher and Maleki*, 131 Cal. App. 4th 1, 3 (2005), citing *Marshall v. Marshall*, 212 Cal. 736, 739-40 (1931); accord *Barnes v. Barnes*, 110 Cal. 418, 421-22 (1895). The fraud must have been "vital to the relationship" which directly affects the actual reason the party agreed to the marriage, or domestic partnership. *Mayer v. Mayer*, 207 Cal. 685, 695 (1929).

Case law regarding annulment based on fraud is mainly tied to the sexual, or procreative, elements of a marriage. Examples include the secret intention not to have sexual relations with one's spouse, or not to reside in the same household as one's spouse; a wife's concealment of a pregnancy by a man other than her husband; or, as possibly in your friend's quandary, the clandestine in-

tention of entering a marriage solely to obtain a green card.

While your friend may obtain an annulment of her marriage, she cannot void her sponsorship of her soon-to-be ex-spouse. By signing the affidavit of support at the time of her marriage, your friend contracted with the U.S. government to sponsor her new husband for either 40 quarters of work, or 10 years and to keep him off public assistance.

A marriage annulment does not revoke the sponsorship obligation. The sponsorship is typically only enforced if the spouse applies for public assistance, or any means-tested public benefit. An agency could sue your friend for a reimbursement of the monies distributed to her spouse.

An annulment of a marriage based upon fraud, with the added element of an immigration issue, is difficult to finalize. And, even if the annulment is granted by the court, the sponsorship still stands. Marriage, with an added sponsorship obligation, should be carefully weighed and considered for short-term and long-

term ramifications, because neither obligation can easily be voided.

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