

ADVICE FROM THE FACULTY OFFICE OF THE ARCHBISHOP OF CANTERBURY ON  
THE MARRIAGE OF FOREIGN NATIONALS BY ECCLESIASTICAL PRELIMINARIES

This advice is intended for the benefit of clergy and surrogates for marriage and may also be of assistance to couples who are arranging their weddings, one or both of whom are not UK nationals.

1. It is strongly advisable that the marriage of foreign nationals (at least for those persons who do not also have UK citizenship) take place after common licence rather than after banns. The legal systems of foreign states can interact with UK law in a complicated way, and the guidance of the surrogate or registrar may be necessary to avoid difficulties with a couple's marriage. This advice concerns the marriages of foreign nationals subject to immigration control, but does not discuss issues to do with the recognition of the Church of England marriage in the foreign state, nor whether a legal act in a foreign state will constitute a legal impediment to marriage in the UK.

2. The situation current at 1st January 2010 is that applicants for marriage in the UK who are subject to immigration control (that is to say those persons who require leave to enter or remain in the UK, which applies to citizens of most states, including nationals of the USA, Canada and Australia, but not nationals of the European Economic Area), require a Certificate of Approval to Marry (CoA) before obtaining a civil marriage preliminary. This regime is intended to screen applications for marriage to ensure that the marriage is genuine and not merely a sham contracted for the purpose of improving an application for asylum or gaining residential rights as a spouse under EC and national law. The marriage preliminaries of the Church of England are currently exempt from the regime. This means that, in effect, the only way a foreign national who is subject to immigration control may marry without a CoA, is to marry after a Church of England marriage preliminary.

3. Strictly speaking the law of marriage and the national immigration requirements are separate. However, there is a contemporary concern that some couples may be contracting marriage solely for immigration reasons. Marriage to someone entitled to reside in the UK may substantially enhance the prospects of that person in obtaining the right. The purpose of this advice is to assist clergy and couples who are seeking to arrange genuine marriages and which do not seek to circumvent the immigration law of this country. The Church has three essential aims –

- a. To ensure that the clergy person is satisfied that the parties are committed to the concept of permanency in marriage. Enquiry into beliefs legally need extend no further than that the parties can partake in the marriage service with integrity. Adequate marriage preparation may well address these issues (Canon B30);
- b. To ensure that parties have thought through the implications of possible deportation or repatriation especially where there are children from this or another earlier relationship;
- c. To ensure that each party is indeed entitled and free to marry. Where a person has left another country secretly or in a hurry, this may involve careful consideration of the evidence required to establish such entitlement.

4. Where a common licence is being sought, it is incumbent on officiating clergy and surrogates to ensure that licences are not granted where there is a strong possibility that the marriage is a sham. Surrogates should defer granting a licence in such circumstances and seek the advice of the Diocesan Registry. The key issue is whether the parties seek a real marriage in the sense that they are undertaking a commitment to permanence. Surrogates will need to satisfy themselves that the parties have considered matters such as what will happen in the event that one is deported, or the consequences of that for other dependents, including minor children (including the unborn). It is also necessary to be aware of the sensitivity of cases where the marriage appears to have arisen in a

genuine relationship, but where the choice of a Church of England parish church is predicated on its unique place outside of the CoA regime. This might occur when the applicants are those who would otherwise have been unlikely to have looked to their parish church for the office of Christian marriage, but who have been advised that a marriage in the Church of England can circumvent the CoA requirements. At the same time, when the request for marriage arises out of a genuine relationship, and is not a sham, surrogates should be aware that an applicant who has a qualification to marry in the parish church should not be denied his or her legal rights, and that also that the parish church serves a role in ministering to those outside of its usual worshipping congregation, especially in the case of marriages.

5. Where the applicant has a UK visa permitting him or her to be resident for at least six months after the date of the marriage, there will probably be less cause for concern. However, although the existence of a visa may allay concerns about the motivation of the applicants, there may still be cases where the terms of the visa are conditional or the visa cannot be renewed and where there will be an advantage in marrying a UK/EEA national.

6. Although certain categories of applicant may enter the UK as a general visitor without requiring a visa (typically Commonwealth citizens), their entry privileges do not include marriage. Such applicants should therefore be strongly advised to obtain a marriage visa.

7. When one or both parties to the marriage are subject to immigration control, it is essential that applicants be afforded the opportunity of proper pastoral contact with the parish priest (see para. 3 (a) above) who should ascertain the background of the couple's relationship and their plans for their future married life. They should be asked to produce their passports and visas and their address(es) should be verified. The surrogate may wish to send copies to the Diocesan Registry to seek advice prior to taking the affidavit and must, in any event, send such copies to the Registry with the completed affidavit. In cases where the applicant does not have a visa and is therefore resident

illegally, he or she should be instructed to contact a solicitor or the Citizens Advice Bureau in order to regularise their position. The applicant should be urged to regularise his or her immigration status prior to the application for common licence being made. In cases where a party does not have a passport (perhaps because it is being held by the Home Office) or a visa, the advice of the Registry should be sought immediately.

8. The absence of the required documentation may not, of itself, be a bar to the granting of a licence, or the solemnising of a marriage, but where those documents cannot be produced, the clergy (and especially surrogates) need to adopt a particularly cautious approach.

9. It is recognised that this area is complicated both pastorally and legally. Surrogates may wish to telephone the Registry to ask for advice on specific cases.

10. Finally, the question has been raised as to whether the advice that foreign nationals obtain a common licence rather than rely on their strict rights to be married by banns is unlawfully discriminatory. Although this advice cannot be binding on the applicant, the foreign national will normally follow the advice of the clergy. It is important that clergy are fully informed so that they may give the correct advice. In those rare cases where a foreign national insists on his strict legal rights, that in no way disapplies the procedures and essential aims which underpin this advice. The responsibility in ensuring that there is no strong possibility that the marriage is a sham devolves onto the incumbent who should still obtain the advice of the Diocesan Registrar. The Marriage Act 1949 and Marriage Measure 2008 gives certain rights to persons to have their banns read but this does not extend to applications for banns using false information or where the proposed marriage is not genuine.

9. Where a foreign national has lived in this country for a substantial period of time, and has effectively established residency, it may well be appropriate to proceed by way of banns in such a case. Again, the advice of the Diocesan Registry ought to be sought.

#### A case study

In the experience of the Faculty Office the most difficult applications are those where it is clear that the marriage is not a blatant sham but where the couple have requested marriage in the Church of England because of its unique place outside the section 19 regime (see para. 4) and where there are immigration reasons behind the request but which are not the sole motivation for marrying. For instance a failed asylum seeker is told that marrying his British girlfriend of several months might help his asylum case and that it would be much easier for this marriage to take place in the Church of England, even though he has no or little faith. Questions arise here. Would this be a sham marriage if arising out of a genuine relationship? Is it right that the couple should be married in the Church of England even though they see it as a loop-hole? In the *Baijai* case, Lord Bingham adopted the definition of marriage of convenience from article 1 of the EC Council Resolution 97/C382/01 of 4 December 1997 on measures to be adopted on the combating of marriages of convenience:

“a marriage concluded between a national of a Member State or a third-country national legally resident in a Member State and a third-country national, with the sole aim of circumventing the rules on entry and residence of third-country nationals and obtaining for the third-country national a residence permit or authority to reside in a Member State”.

This is surely right but it is also the duty of the clergy to ensure that the parties understand the permanence of Christian marriage. That duty can be found in Canon B30(3). In this case the applicant should be asked to regularise his immigration situation first. He must seek leave to remain. If he has tried and failed to gain asylum and the process has continued for some time (in many cases, cases can take several years), the applicant should disclose all the correspondence

relating to the asylum claim to demonstrate that the case has gone as far as it can. It is up to the clergy to interview the couple in order to gain an understanding as to the nature of their relationship. If the relationship is a genuine one and the parties understand the nature and import of marriage, it would be disproportionate to refuse the licence. Although the overriding interest is to ensure that the marriage is based on a genuine intention, such procedures can help to ensure that the position of the Church of England is not abused in a way which could cause it potential embarrassment or damage its position as a national institution privileged and obligated to carry out national duties.

This is a balancing exercise. The Church is bound to respond to the needs of all parishioners in its duty of care and mission. However the Church also has an obligation, both to itself, the State and the couples it marries to ensure that the holy estate of marriage is not abused in order to circumvent the immigration laws of this country.

The Faculty Office

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