MATTER OF LABIANO

In Visa Petition Proceedings

A-14241315

Decided by Board April 30, 1965

Since the marriage on September 1, 1964, at Reno, Nevada of petitioner and beneficiary, uncle and niece, respectively, is void under section 125.290 of the Nevada Revised Statutes because within the degree of consanguinity prohibited by section 122.020 of the Nevada Revised Statutes, approval of the visa petition to accord beneficiary nonquota status on the basis of that marriage is revoked.

The case comes forward on appeal from the order of the District Director, San Francisco District, dated January 11, 1965 revoking the nonquota visa petition previously approved on behalf of the beneficiary on October 22, 1964 for the reason that the marriage of the parties, who are uncle and niece, is not valid under Nevada law and the petition was approved in error.

The petitioner, a native of the Philippine Islands, a naturalized citizen of the United States, 56 years old, seeks nonquota status on behalf of the beneficiary, a native and citizen of the Philippine Islands, 23 years old. The parties were married on September 1, 1964 at Reno, Nevada. A prior marriage of the petitioner was terminated by a decree of divorce in the Superior Court of the State of California for the City and County of San Francisco on July 13, 1961.

A sworn statement was taken from the beneficiary by a Service officer on November 9, 1964. She testified that the petitioner is her uncle, the brother of her mother, whose maiden name was Mariano. She stated that her uncle changed his family name when he applied for naturalization. The petitioner and the beneficiary's mother have the same common parents, Severo Mariano and Modesta Paulo.

Section 122.020 of the Nevada Revised Statutes provides: "1. Male persons of the age of 18 years, and female persons of the age of 16 years, not nearer kin than second cousins or cousins of the half blood,

and not having a husband or wife living may be joined in marriage." Section 125.290 of the Nevada Revised Statutes (1957) reads: "The following marriages, if celebrated within the state, are void without any decree of divorce or annulment or other legal proceedings: 1. All marriages which are prohibited by law because of: (a) Consanguinity between the parties; * * *."

The petitioner and the beneficiary in the instant case are uncle and niece, respectively. Their marirage is within the degree of consanguinity prohibited by section 122.020 of the Nevada Revised Statutes and they do not possess the capacity to enter into a valid marriage. Under section 125.290 of the Nevada Revised Statutes the marriage is void. The parties appear to have been ignorant of the provisions of Nevada law but that does not remedy the defect in their marriage. The appeal will be dismissed.

ORDER: It is ordered that the appeal from the order of the District Director revoking the approval of the visa petition be and the same is hereby dismissed.