

1 **FOR PUBLICATION**

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**IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

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MOSAMMAT JOINAB AKTER,)
a.k.a. SHILA ANSAR,)

FCD DI CIVIL ACTION NO. 98-0234

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Plaintiff,)

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v.)

ORDER FOLLOWING BENCH TRIAL

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ANSAR ALI,)

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Defendant.)

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I. INTRODUCTION

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THIS MATTER came on for bench trial on July 25, 2000, July 28, 2000, and February 12, 2001, on Plaintiff's Complaint for divorce, distribution of the marital estate, child and spousal support, attorney fees and costs ("Complaint"). Plaintiff appeared with counsel, Stephen J. Nutting, Esq. Defendant appeared with counsel, Jay H. Sorensen, Esq. The Court, having considered the testimony of the witnesses, exhibits admitted into evidence, and being fully advised in the premises, now renders its decision.

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II. BACKGROUND

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On June 16, 1998, Plaintiff filed the Complaint against Defendant. On July 27, 1998, Defendant filed his Answer claiming he was never married to Plaintiff. On the same day, Plaintiff applied for temporary orders for child and spousal support, attorney fees and costs and to restrain Defendant from dispensing of any marital property. The application was supported by a declaration submitted by Plaintiff's attorney and Mohammed Mokhlesur Rahman ("Mr. Rahman"), Plaintiff's brother. Defendant, through counsel, filed his declaration in opposition to Plaintiff's motion for temporary orders. Plaintiff's application for relief was heard on December 1, 1998. On December 1, 1998, the court denied Plaintiff's motion for

1 temporary spousal and child support but found sufficient basis to give temporary possession of Defendant's
2 family home in Bangladesh to Plaintiff.¹

3 On April 13, 2000, the matter came on for a status conference and trial setting hearing. A bench
4 trial was set for July 25, 2000.² Prior to trial, the parties agreed to bifurcate the trial into two phases: (1)
5 to determine whether the parties were married; and (2) if the court found that there was a marriage, the
6 case would proceed on the remaining issues. The trial on the existence of the marriage was held on July
7 25, 2000, and continued to July 28, 2000. The court took the matter under advisement and on September
8 12, 2000 advised the parties that it would apply the standard set forth in RESTATEMENT (SECOND) OF
9 CONFLICTS OF LAW § 283 (1989) to determine whether the parties were married.³ On the same day,
10 the court determined that the laws of Bangladesh would apply and ordered the parties to prepare
11 memorandums of law on the requirements for a valid marriage in Bangladesh.⁴ On October 2, 2000, the
12 court issued its decision concluding that based on the evidence presented on July 25, 2000, and July 28,
13 2000, the parties were married in Bangladesh on October 15, 1978.⁵

14 The trial on the remaining issues was initially calendared for October 3, 2000, but at the hearing,
15 the court instead ordered the parties to brief several issues of law regarding the distribution of the marital
16 estate and spousal and child support. The trial was continued to February 12, 2001.

17 III. FINDINGS OF FACTS

18 During the trial which spanned a total of three days, July 25, 2000, July 28, 2000, and February
19 12, 2001, the court heard testimony from: Plaintiff, Mr. Rahman, and Defendant. Plaintiff's testimony which

21 ¹ See December 17, 1998, order of Associate Judge Juan T. Lizama.

22 ² On June 12, 2000, Defendant's counsel moved to withdraw as counsel for Defendant and the matter was set
23 on July 10, 2000. The motion was apparently withdrawn as Attorney Sorensen continued to represent Defendant to date.
The trial was initially scheduled to continue on July 24, 2000 but was moved to July 25, 2000.

24 ³ See Order of September 28, 2000. RESTATEMENT (SECOND) OF CONFLICTS OF LAW § 283(1) (1989) reads: "[t]he
25 validity of a marriage will be determined by the local law of the state which, with respect to the particular issue, has the
26 most significant relationship to the spouses and the marriage under the principles stated in § 6." See also the factors
listed at RESTATEMENT (SECOND) OF CONFLICTS OF LAW § 6 (1989).

27 ⁴ See Order of September 28, 2000.

28 ⁵ See *Akter v. Ali*, Civ. No. 98-0234 (N.M.I. Super. Ct. Oct., 2000) ([Unpublished] Order).

1 was entirely in Bangoli was translated to English by a Bangoli translator. Defendant and Mr. Rahman
2 whose first language is Bangoli chose to testify in English. There were a number of exhibits admitted into
3 evidence.⁶

4 At the outset, the Court notes that the parties throughout the trial held completely different positions.
5 Plaintiff took the position that she was married to Defendant and that they have one child by adoption,
6 Rima. Defendant, on the other hand, testified that he was never married to Plaintiff and that he has no
7 children, adopted or natural, with Plaintiff. Because the outcome of this case rests solely on the credibility
8 of the parties, the Court carefully considered the testimony of each party, their appearance, demeanor,
9 facial and physical reactions to the questions posed by counsels on direct and cross examination, and the
10 exhibits admitted into evidence. The Court finds that Defendant's testimony throughout the trial was
11 confused and contradictory and contained many inconsistent statements which raise serious concerns
12 regarding the truthfulness of Defendant's overall testimony. Unlike Defendant, Plaintiff testified consistently
13 and clearly and offered written exhibits to corroborate her testimony. Having considered all the evidence,
14 the Court finds that Plaintiff's testimony should be given far more weight and credibility than Defendant's
15 testimony. As such, the Court hereby enters the following findings of fact:

16 1. Plaintiff Mosammat Joinab Akter, a.k.a. Shila Ansar ("Akter"), is a citizen and resident of
17 Bangladesh.⁷ Plaintiff arrived on Saipan for the first time on June 30, 2000, to testify in this case.

18 2. Defendant Ansar Ali ("Ali") is a citizen of Bangladesh who has resided in Saipan,
19 Commonwealth of the Northern Mariana Islands since February 1987. Defendant testified that he was
20 never married to Plaintiff and does not have a child, natural or adopted, with her. He testified, however,
21 that he knows Plaintiff and claims that Plaintiff was a prostitute in Bangladesh when he brought her to his
22 home to care for his mother. Defendant testified that he left Bangladesh in July of 1985 in search of better
23 opportunities and eventually ended up on Saipan as a nonresident worker in February 1987. In March of
24 1989, Defendant married a Palauan citizen and has five children with his Palauan wife.

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26 ⁶ See Exhibit Logsheets for July 25 and 28, 2000 and February 12, 2001.

27 ⁷ The Court submits that the Court has jurisdiction to hear this case based on Defendant's residency in the
28 Commonwealth, as it is undisputed that Defendant lived in Saipan continuously for a period of two years prior to the
filing of the Complaint.

1 3. Prior to coming to Saipan, Plaintiff lived in Bangladesh where she was born. Plaintiff came to
2 Saipan to sue Defendant for divorce after hearing from her brother, Mr. Rahman, that Defendant was telling
3 people on Saipan that he was never married to Plaintiff. Plaintiff was hurt and dishonored by Defendant's
4 statements and because she had no money, asked Mr. Rahman to bring her to Saipan to pursue this case
5 against Defendant.

6 4. Plaintiff testified that sometime in 1978 she met Defendant through her sister's husband who
7 arranged the initial meeting between her and Defendant in Bangladesh. There was no period of courtship
8 between Plaintiff and Defendant. The marriage and wedding preparation and ceremony were arranged by
9 family members, a common practice in Bangladesh.

10 5. Plaintiff and Defendant were married on October 15, 1978, at Plaintiff's father's house.
11 Present at the wedding were all her relatives and the "Kagi" who married them in a Moslem ceremony.
12 The Kagi was appointed by the Bangladesh government to officiate at weddings and was responsible for
13 registering the marriage. Plaintiff testified that she had to obtain a copy of the "Nikah Nama,"⁸ her
14 marriage certificate to Defendant, from the Kagi's government office in Dhaka, Bangladesh because the
15 original marriage certificate which she had, was destroyed in a flood sometime in 1978. The original
16 marriage certificate she attested contained original signatures of both Defendant and Plaintiff. Plaintiff
17 offered into evidence the Nikah Nama to corroborate her testimony regarding her marriage to Defendant.⁹

18 Mr. Rahman also testified that he attended Plaintiff and Defendant's wedding in 1978.

19 6. After they were married, Plaintiff and Defendant lived together in Defendant's sister's house.
20 In 1979, to help improve their livelihood, Defendant obtained a job in Saudi Arabia as an overseas worker.
21 He left Plaintiff to work in Saudi Arabia on August 11, 1979. He returned to Bangladesh for a 40-day
22 vacation on December 22, 1980. While in Bangladesh, he lived with Plaintiff, as husband and wife, for
23 about 34 of the 40 days. He returned to work in Saudi Arabia in January 1981. In December of 1982,
24 Defendant returned to Bangladesh. Between 1982 and 1985, Defendant made frequent trips to Saudi
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26 ⁸ See Pl.'s Ex. 1. The Court notes that the same document was previously admitted into evidence at the
27 December 1, 1998 hearing before Associate Judge Lizama.

28 ⁹ *Id.*

1 Arabia but lived mostly in Bangladesh during that period with Plaintiff and Rima, their daughter by adoption.
2 Plaintiff testified that shortly after 1982, she and Defendant owned a minibus business to support their
3 family. Plaintiff offered a copy of insurance coverage for the minibus the parties owned to corroborate her
4 testimony that she and Defendant had a minibus business.¹⁰

5 7. Defendant and Plaintiff have no natural children together. Plaintiff and Defendant adopted a
6 child, Rima, by local custom in December 1982. Plaintiff testified that in December of 1982, she and
7 Defendant met two women on the way to Plaintiff's father's house who spoke of a child whose father died
8 before her birth and raised concerns that the mother of the child could not marry as a result of her child's
9 circumstances. Hearing that, Defendant and Plaintiff offered to adopt the child. That child was Rima, a
10 nine-month old child who was born on March 31, 1982. Plaintiff testified that Rima was adopted
11 according to the Bangladesh way, with the approval of the birth mother and the villagers where the natural
12 mother was born. There were no legal papers prepared. Rima's adoption became effective when
13 Defendant assumed custody and responsibility over the child. To corroborate her testimony that Defendant
14 assumed custody of Rima, Plaintiff produced photographs taken in 1985 of Rima with Defendant.¹¹

15 8. After the adoption in 1984, Plaintiff, Defendant and Rima lived at Defendant's sister's house
16 and later moved to live with Defendant's mother at Defendant's family home. Defendant lived with Plaintiff
17 and Rima and his mother until he left Bangladesh in July 1985. Plaintiff and Rima remained in Bangladesh
18 to care for Defendant's elderly mother while Defendant was overseas until her death in May of 1987.
19 Plaintiff offered several photographs of Defendant, Plaintiff and Rima and Defendant's mother taken
20 sometime in 1985 to corroborate her testimony regarding her familial relationship with Defendant and his
21 mother.¹²

22 9. In 1984, Defendant and Plaintiff, as husband and wife, acquired a parcel of land in
23 Bangladesh.¹³ Anticipating his departure from Bangladesh in July 1985, Defendant appointed Plaintiff, his

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25 ¹⁰ See Pl.'s Ex. 7 - Documents include both Ali and Akter's names.

26 ¹¹ See Pl.'s Ex. 11.

27 ¹² See Pl.'s Ex. 11.

28 ¹³ See Pl.'s Exs. 2 & 5.

1 lawful wife, with his power of attorney to care, manage, protect, sale or transfer their property during his
2 absence from Bangladesh.¹⁴

3 10. Defendant left Bangladesh in July 1985 to work overseas. While away from Bangladesh, he
4 continued to communicate with and support Plaintiff and Rima until late 1994. According to testimony and
5 documents provided by Plaintiff, Defendant provided support to her and Rima throughout their marriage
6 until 1994. Defendant sent an average of \$151.71 (U.S.) monthly during that period.¹⁵ For some unknown
7 reasons, Defendant stopped all communications with Plaintiff in late 1994 and early 1995. Plaintiff
8 continued to try to reach Defendant by telephone but for some reason Defendant did not accept the calls.
9 From 1995 to the filing of the Complaint in June of 1998, Plaintiff conducted herself as Defendant's wife
10 carrying for their child Rima, paying debts that Defendant owed to creditors, and maintained and pay
11 property taxes on the property the parties owned in Bangladesh. Plaintiff continued to be loyal to
12 Defendant and made herself available emotionally to him until she heard that Defendant was spreading lies
13 about his marriage to Plaintiff. Emotionally distraught, Plaintiff filed for divorce on Saipan with the
14 assistance of her brother, Mr. Rahman.

15 11. Left without other means of support from 1995, Plaintiff was forced to survive on the charity
16 of her family members, especially Mr. Rahman. Plaintiff testified that she asked Mr. Rahman, her brother
17 from Bangladesh, who was on Saipan working as a nonresident worker, to help support her and Rima.
18 Mr. Rahman provided financial support to Plaintiff and Rima from late 1995 to the present. Mr. Rahman
19 came to Saipan with the help of Defendant, who helped recruit him to work as a nonresident worker
20 making minimum wage.

21 12. When Defendant left Bangladesh in 1985. Plaintiff was hounded by people Defendant owed
22 money to. Plaintiff was forced to find money to pay off debts Defendant incurred before 1985. According
23 to Plaintiff, Defendant's creditors kept bothering her for money and to avoid getting into trouble with those
24 people, she was forced to ask Mr. Rahman to help her. Mr. Rahman who worked on Saipan sent Plaintiff
25 \$3,500 (U.S.) in 1997. Plaintiff transferred one-half of the property she and Defendant bought in 1984

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27 ¹⁴ See Pl.'s Ex. 5. The Court notes that the document, when translated, identifies Plaintiff as Defendant's wife.

28 ¹⁵ See Pl.'s Exs. 8 & 9.

1 as repayment for the money she received to pay off Defendant's debt. The deed transferring half of the
2 property was entered in August 1998. The property was transferred by Plaintiff under the power of
3 attorney given to her by Defendant in 1985. Plaintiff testified that the property she gave Mr. Rahman was
4 appraised at \$3,500 (U.S.) in 1997.¹⁶ She indicated that the value of the lot she gave to Mr. Rahman was
5 based on a price list provided by the Bangladesh government.

6 13. Plaintiff and Defendant still own the remaining one-half of the property they bought in 1984.
7 There is a house on that parcel of land which is located in an average or middle class neighborhood in
8 Bangladesh. The house has three rooms, an isolated bathroom, shower and kitchen with a tin roof. It is
9 a simple modest house and is where Plaintiff and Rima have lived since Defendant's mother's death. At
10 one time, Plaintiff had to rent part of the house to help her make ends meet. Plaintiff, however, would have
11 strongly preferred not to do so because of the condition of the house and the small size and lack of privacy.
12 Plaintiff testified that the house is in much need of repair.

13 14. Defendant owns another lot in Bangladesh in his own name which he acquired before the
14 marriage and is Defendant's separate property.

15 15. Plaintiff testified at trial, she is 40 years of age, has a third grade education, has no marketable
16 skills to obtain employment, no job, and no job training or experience. She stated that she would need
17 about \$290 (U.S.) per month to support herself and Rima and to keep the house that she lives in good
18 repair. She also testified that she has no other property or income to support her. If Plaintiff were to sell
19 the house and property she has, she would not have any place else to live. Plaintiff also testified that the
20 property could be sold for about \$4,000 at the time of trial. According to Plaintiff, Rima, who turned 18
21 in March of 2000, is in high school in Bangladesh and has plans to go to college.

22 16. Plaintiff was assisted financially by Mr. Rahman, in bringing these proceedings. At the time
23 of trial, Mr. Rahman had paid the following expenses in U.S. dollars on behalf of Plaintiff:

- | | | |
|----|-----------------|------------|
| 24 | a. Airfare | \$1,465.00 |
| 25 | b. DHL expenses | 77.00 |

26 _____
27 ¹⁶ Plaintiff initially testified she sold the property to her brother for \$3,500 (U.S.), but later clarified that she
28 deeded a portion of the property as repayment of the \$3,500 she received from Mr. Rahman to repay Defendant's debts.
Mr. Rahman did not hear of the transfer until February 12, 2001.

1 c. \$300 Monthly support from June 2000
2 until the time of the trial in Feb. 2001 2,400.00

3 d. Medical expenses 856.00

4 17. Defendant testified that he owned a taxi business on Saipan until December 2000. On
5 February 12, 2000, Defendant claimed he sold his business and was employed as a taxi driver because
6 the business was not profitable. Defendant testified that prior to the sale of his business, he had a business
7 account for Ali Enterprises (his taxi company) at Bank of Guam.¹⁷ Plaintiff's exhibits 14 through 19
8 represent Ali Enterprises' bank account from 1998 to December 1999, and showed average deposits of
9 \$3,923 per month for operating the taxi business. Defendant testified that he stopped operating his taxi
10 business in 2000 and started working as a taxi driver earning about \$488 per month. The Court finds
11 Defendant's statement regarding his current income suspect, given his past earning ability.

12 18. Defendant testified that his company grossed \$53,196 in 1995, \$16,000 in 1996, \$80,000
13 in 1997, \$56,000 in 1998 and \$50,000 in 1999.¹⁸ Defendant stated that at one point in 1995 and 1996,
14 his company owned five or seven vehicles but claims he sold all his cars, including the car which he
15 operates as a taxi. He testified he sold his cars after the Complaint was filed to pay off insurance premiums
16 he owed and claims he has no money now. Defendant's testimony was so contradictory on the stand that
17 it was not clear exactly how much Defendant received for the vehicles he allegedly sold. Throughout
18 Defendant's testimony regarding his income and business, he materially understated the value of the taxis
19 he sold and changed his testimony when cross-examined by Plaintiff's counsel.

20 19. Defendant's testimony regarding his current job as a taxi driver is also suspect. Defendant
21 testified that the car he is currently operating does not belong to him but admits that the vehicle still has the
22 name of his taxi company on the door. He stated that he sold the car and business to his Palauan brother-
23 in-law who works at a garment factory making minimum wage. When asked whether his brother-in-law
24 obtained a taxi license to do business, Defendant stated that his brother-in-law had not done so because
25 he was too busy. When asked for how much he sold his current car to his brother-in-law, Defendant again

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27 ¹⁷ See Pl.'s Ex. 14.

28 ¹⁸ See Pl.'s Exs. 14, 15, 16, 17, 18, and 19.

1 fudged on the exact price. Defendant testified that he sold the car for \$3,000 and then retracted it and said
2 he was paid \$300 to \$400 depending on what Defendant's needs were at the time.

3 20. Defendant's contradictory statements regarding the sale of his business, his current
4 employment and the amount he received for the sale of the vehicles raises some serious concerns about the
5 veracity of Defendant's overall testimony. The Court is inclined to agree with Plaintiff's argument that
6 Defendant's alleged sale of all the assets of his taxi business after the filing of the Complaint was a sham
7 done only to divest the marital estate of all its assets to preclude an equitable distribution of the marital
8 estate.

9 21. Throughout the course of the proceedings, Defendant continuously provided perjurious and
10 falsified testimony and evidence to the Court. Defendant previously stated in sworn deposition testimony
11 that he had not signed the power of attorney in favor of his wife, which document clearly identified Plaintiff
12 as his wife in 1985.¹⁹ Later, in the face of irrefutable evidence, Defendant admitted, in court, that it was
13 his signature on the document entered as Exhibit 5.

14 22. The Court finds Defendant's claim that he sold his business and all of its assets, to eliminate
15 his credit, and to take a job earning approximately \$488 per month, when he was previously making in
16 excess of \$50,000 per year, is not reasonable, and therefore not credible. Defendant's testimony and
17 efforts to divest the assets contained in the marital estate only months, if not weeks, before trial constitutes
18 a fraud, not on Plaintiff, but on the Court.²⁰

19 23. The Court finds that Defendant has made every effort to limit or hide marital assets to avoid
20 distribution of those assets or any portion thereof to Plaintiff. The Court further finds that because of
21 Defendant's manipulation of the marital assets, the Court cannot reasonably determine a fair and equitable
22 distribution of the marital estate.

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24 ¹⁹ See Pl.'s Ex. 12.

25 ²⁰ Defendant testified that he sold one of the vehicles to his brother-in-law another to a friend, also from
26 Bangladesh, a third to another person from Bangladesh, and a fourth to an unidentified Filipino man. At least two of
27 those vehicles were sold only weeks before trial on the property distribution and well after the Court issued its order
28 declaring the existence of the marriage. The timing of the sale of these properties, and apparently non-arms length
transactions between relatives and friends of Defendant, forces the conclusion that the transactions were a sham, solely
done as a fraud on the marital estate.

1 determine the title to real property located outside the forum state. *See Barrett v. Failing*, 111 U.S. 523,
2 4 S. Ct. 598, 28 L. Ed. 505 (1884). While a court may not direct another jurisdiction to determine the title
3 to real property located outside the forum state, it can enter orders which would require a party to execute
4 a transfer of such property. *See Ralske v. Ralske*, 85 A.D.2d 598 (1981) (holding that where the trial
5 court had *in personam* jurisdiction over the parties, it has jurisdiction over their rights regarding foreign
6 realty and could order the sale of that realty); *see also Fall v. Eastin*, 215 U.S. 1, 30 S. Ct. 3, 54 L. Ed.
7 65 (1909).

8 It is clear that this Court has the authority to order a distribution of the marital properties located
9 outside of the Commonwealth and in Bangladesh in the case at bar. Although the Court cannot directly
10 order the officials in Bangladesh to make a transfer of the title, the Court can order the parties to execute
11 documents of conveyance, as necessary, to transfer the property as the Court deems fair and equitable.

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13 **B. Separation Date**

14 The Commonwealth Marital Property Act of 1991, 8 CMC §§ 1811-1834, codifies the
15 presumption that all property of spouses is marital property. In particular, “[I]come earned or accrued by
16 a spouse or attributable to property of a spouse during marriage . . . is marital property.” 8 CMC §
17 1820(d). The act further defines the phrase, “during marriage” as:

18 a period from the date of marriage to the date of separation, dissolution, or the
19 death of a spouse.

20 ‘Date of separation’ requires inquiry into the subjective nature of
21 the parties’ separation. A temporary separation for economic or social reasons
22 is not enough. There must be a true breakdown of the marriage relationship, with
23 the parties living separately and apart and with no present intent to resume the
24 marriage relationship.

25 8 CMC § 1813(h).

26 The House Committee on Judiciary and Governmental Operations added this definition of “date
27 of separation” to the draft of the Marital Property Act in order to reflect its concern “with the common
28 practice in the Commonwealth of parties separating and living apart after the breakdown of the marriage
without recourse to the court procedures of either legal separation or divorce.” *See House Standing
Committee Report No. 7-17A* (Sept. 4, 1990) at 5.

 In *Hanan v. Hanan*, Civ. No. 93-0643 (N.M.I. Super. Ct. Dec. 1, 1994) (Decree of Divorce:

1 Equitable Distribution of Marital Estate at 8), citing *In re Marriage of Von Der Nuell*, 28 Cal. Rptr. 2d.
2 447, 448 (Cal. Ct. App. 1994), however, the court recognized that the mere fact that the parties have lived
3 separately and apart does not constitute a “separation” for purposes of the Marital Property Act. Rather,
4 the court must look to the parties’ conduct to see whether it evidences a complete and final break in the
5 marriage relationship. In *Hanan*, the court found:

6 [i]f one spouse believes the marriage is still functional, and conducts herself
7 accordingly without the other spouse informing her of the contrary, then she
8 is continuing to contribute to the marital community, even if the contribution
9 is limited to keeping herself emotionally available to the other spouse. As
10 long as a spouse continues such contributions, she is entitled to her share of
11 her spouse’s property.

12 *Hanan* at 10. In *Hanan*, although the parties had been separated and living apart since 1978, the court
13 found that for purposes of the Marital Property Act, the parties did not separate until March of 1992, when
14 Dr. Hanan wrote to his wife requesting a divorce.

15 In the instant case, Defendant has been physically separated from Plaintiff since approximately July
16 1985. The separation, however, was clearly for “economic reasons” as Defendant left Bangladesh to
17 obtain employment to support his family. In fact, Defendant continued to support the family throughout
18 1994 with periodic support payments. Throughout the parties’ separation and until Plaintiff filed the
19 instance action for divorce, Plaintiff had, like Mrs. Hanan, conducted herself in all respects as Defendant’s
20 spouse. It is clear from the testimony of Plaintiff that she continued to reside in and maintain the marital
21 property and care for the parties’ minor child and pay debts incurred by Defendant as late as 1997. In
22 addition, Defendant continued to help Plaintiff’s family by bringing her brother, Mr. Rahman, to Saipan to
23 work. Therefore, for purposes of the Marital Property Act of 1990, the date of separation for purposes
24 of distribution of the marital estate is the date the complaint was filed - June 16, 1998.

25 **C. Award of Portion of Marital Estate.**

26 The primary properties contained within the marital estate at the time of the parties’ separation, are
27 a certain parcel of real property located in Bangladesh and a taxi business on Saipan. Plaintiff transferred
28 one half of the real property in Bangladesh to her brother for his continued financial support of herself and
the minor child since the Defendant discontinued support in 1995. Plaintiff continues to pay taxes and
resides on the remaining parcel with Rima. Given Defendant’s lack of support over the past seven years

1 and his dissipation of the marital estate as discussed, the Court awards the property in Bangladesh to
2 Plaintiff.

3 Defendant also owns another parcel of property in Bangladesh, acquired prior to the marriage held
4 in his own name. Defendant shall keep the other parcel held in his name as his separate property.

5 The other remaining property contained within the marital estate is a taxi business on Saipan
6 operated by Defendant. Plaintiff does not seek an award of an interest in such business property as it is
7 impractical for her to oversee or obtain an accounting of the proceeds of such business. Instead, Plaintiff
8 seeks an award of permanent spousal support, in an amount necessary to meet her basic needs until death
9 or remarriage, in lieu of an award of an interest in the taxi business operated by Defendant.

10 Defendant has made every effort to hide the assets contained in the marital estate or to divest
11 himself of title to safeguard those assets from Plaintiff's claims. Plaintiff has requested that she be awarded
12 permanent support in lieu of a property division of the taxi business, given the difficulties in effecting any
13 order for property distribution. Such an award is clearly equitable given the facts of this case, and similar
14 awards of alimony in lieu of property division have been made by other courts under similar circumstances.
15 *See Wood v. Wood*, 793 P.2d 1372, 1373-75 (Okla. Ct. App.1990) (holding that where a husband
16 appropriated monies from the parties' bank accounts at the time he filed the divorce petition and established
17 a secret bank account which he attempted to conceal from consideration by the trial court as part of the
18 marital estate, and where the husband was awarded the couple's house, an award of \$75,000 alimony in
19 lieu of property division was justified).

20 In the instant case, Defendant had a successful and ongoing taxi business under which he operated
21 no less than seven taxis. This business generated in excess of \$50,000 per year for each of the three years
22 it was operated prior to the trial. Defendant industriousness, intention to remain in Saipan and past earning
23 ability clearly show he has the ability to earn the income he had prior to trial. Plaintiff, on the hand, wishes
24 to return to Bangladesh to be with the parties' daughter and her family. Under these circumstances, the
25 Court finds that it would be just and equitable that Plaintiff be awarded permanent support in lieu of
26 property division of the taxi business.

27 **D. Plaintiff is Entitled to Alimony for "Necessaries"**

28 The basic due process jurisdictional requirement for an enforceable award of alimony and child

1 support orders is that the forum court must have *in personam* jurisdiction over the party against whom such
2 orders are directed. *See Estin v. Estin*, 834 U.S. 541, 68 S. Ct. 1213, 92 L. Ed. 1561 (1948). The
3 requirement is satisfied in the same manner as in other civil actions: there must be sufficient “minimum
4 contacts” between the individual defendant and the state so that the exercise of jurisdiction by the state is
5 not offensive to “traditional notions of fair play and substantial justice.” *See Shaffer v. Heitner*, 433 U.S.
6 186, 97 S. Ct. 2569, 53 L. Ed. 2d. 683 (1977).

7 Because Defendant has resided within the Commonwealth of the Northern Mariana Islands since
8 1987, the Court clearly has *in personam* jurisdiction over Defendant. Like other choice of law issues,
9 because Plaintiff has chosen to bring her action in this jurisdiction and has consented to submit to the *in*
10 *personam* jurisdiction of the Court, she has also agreed to submit to the laws of the Commonwealth of the
11 Northern Mariana Islands relative to the award of spousal support.

12 The leading case in the Commonwealth concerning the issue of alimony or spousal support is
13 *Thornburg v. Thornburg*, 1997 MP 27, 5 N.M.I. 125. In *Thornburg*, citing *Washburn v. Washburn*,
14 677 P.2d. 152, 158 (Wash.1984) and *Ahlo v. Ahlo*, 619 P.2d. 112, 117 (Haw. Ct. App. 1980), the
15 Supreme Court recognized that an award of maintenance, spousal support, or alimony is within the sound
16 discretion of the trial court. The Commonwealth Code provides for an order of spousal support, as the
17 court “deems just[] and [as] the best interests of all concerned may require.” *See* 8 CMC § 1311.
18 Although the legislature gives no further guidance to determining whether, and under what circumstances,
19 alimony or spousal support should be awarded, the Supreme Court upheld two key factors in determining
20 whether alimony should be awarded:

- 21 1. The dependant spouse’s need for support and maintenance; and,
- 22 2. The supporting spouse’s ability to pay.

23 *Thornburg* at ¶10, 5 N.M.I. at 126 (citing *Gottsengen v. Gottsegen*, 492 N.E.2d 1133 (Mass. 1986);
24 *Brown v. Brown*, 300 So. 2d 719 (Fla. Dist. Ct. App. 1974)).

25 In the instant case, Plaintiff presented evidence that as a result of her lack of education, advanced
26 age, and cultural restrictions, she is incapable of obtaining any employment. As a result, Plaintiff is
27 incapable of supporting herself unless she was able to remarry, a prospect which appears to be unlikely.

28 At the same time, Defendant has been running a successful taxi-cab business, and has been

1 producing income sufficient to support his bigamous relationship, and other children born of the second
2 marriage. Plaintiff seeks an award, from Defendant, of permanent alimony until death or remarriage. Other
3 courts have found the following considerations in the award of alimony to be applicable, all of which would
4 be considered in Plaintiff's favor here:

- 5 1. Standard of living established during the marriage; *Rainwater v. Rainwater*, 869 P.2d
6 176 (Ariz. Ct. App. 1993);
- 7 2. The income and financial resources of the parties; *Moore v. Moore*, 543 So. 2d 252 (Fla.
8 Dist. Ct. App. 1989) (the party seeking support must prove that he or she needs the
9 support;
- 10 3. Duration of the marriage; *In re marriage of Benson*, 932 P.2d 104 (Ore. Ct. App. 1997)
11 (wife of 22 years entitled to \$3,500 monthly support for four years and \$2,000 in
12 permanent support); and,
- 13 4. Age and physical and emotional health of the parties; *In re Marriage of Ross*, 772 S.W.
14 2d 890 (Mo. Ct. App. 1989) (an award of permanent maintenance of \$750 per month
15 was affirmed as a result of a 21-year marriage where the wife's background did not
16 indicate that her employment opportunities would improve dramatically with additional
17 educational training).

18 In the instant case, each of the factors listed above favor an award of permanent support to Plaintiff.
19 Plaintiff stated that she needs a minimum of \$290 per month to support her and Rima.²¹ Defendant has
20 enjoyed income in excess of \$50,000 per year for the years preceding trial. The duration of the marriage
21 was in excess of 20 years. It is clear from Plaintiff's testimony that she does not have the education or
22 training to obtain gainful employment, and it is unlikely that her situation would improve with additional
23 training or education. Considering Plaintiff's request for an award of permanent alimony or spousal support
24 in lieu of property interest in the taxi business and her need for support and maintenance, the Court finds

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26

27 ²¹ The Court notes that Rima has reached the ae of majority and finds Plaintiff's request should be adjusted
28 by prorating the amount by two.

1 \$200 per month in permanent alimony is reasonable and equitable and is hereby awarded.²² Such alimony
2 shall be retroactive from the date of the filing of the Complaint and shall continue until Plaintiff's death or
3 remarriage. *See Monroe v. Monroe*, 745 So. 2d 249 (Miss. 1999).

4 **E. Retroactive Child Support**

5 As stated previously, the basic due process jurisdiction requirement for alimony and child support
6 order is that the forum court must have *in personam* jurisdiction over the defendant. It cannot be argued
7 that this Court does not have *in personam* jurisdiction over Defendant in the instant case. As a result, the
8 Court clearly has jurisdiction to award child support, despite the fact that the child is not a resident of the
9 Commonwealth. The operative issue in determining whether a court has jurisdiction to enter an order for
10 child support is not the residence of the child, but the court's jurisdiction over the defendant. *See Kulko*
11 *v. Superior Court of California*, 436 U.S. 84, 98 S. Ct. 1690, 56 L. Ed. 2d 132 (1978).

12 In *Pille v. Sanders*, App. No. 99-009 (N.M.I. Sup. Ct. June 28, 2000) (Opinion at 7), the
13 Supreme Court of the Commonwealth recognized that a parent's duty to provide support to his child begins
14 at birth. In the instant case, Defendant was paying child and spousal support in the amount of
15 approximately \$151.71 per month through 1994. Since that time, however, all support payments have
16 ceased. Defendant's obligation to support the minor child, however, did not cease until March 2000 when
17 the child reached the age of majority. The Court finds that Plaintiff is entitled to an award of retroactive
18 support from January 1995 until March 2000, in the total amount of \$3,876 (U.S.). That amount is based
19 on the average monthly support Defendant sent to Plaintiff from 1988 to 1994, prorated by two, or \$76
20 per month.

21 **F. Cost and Attorney Fees**

22 Historically, a court's authority to award attorney fees was founded in the common law. Originally,
23 the right to an award of attorney fees was founded upon a husband's obligation to support his wife. *See*
24 *In re Marriage of Johnson*, 568 N.E.2d 927 (Ill. App. Ct. 1991). Having roots in the common law,

25
26 ²² The amount is based on the amount required to support both Rima and Plaintiff, prorated by two ($\$290 \div 2$
27 = \$145 per month) plus fifty five dollars is awarded per month for Plaintiff in lieu of property division of Defendant's
28 business. The total permanent support awarded is \$200 per month. The Court notes this amount is equitable and
reasonable considering Plaintiff received between 1988 to 1994 an average of \$151.71 monthly from Defendant and that
from 1995 to the filing of the Complaint Defendant had an annual income in excess of \$50,000.

1 awards for attorney fees can be made even without specific statutory authorization. *See Ex parte Austin*,
2 15 So. 2d 710 (Ala. 1943); *see also Connor v. Connor*, 91 S.W.2d 260 (Ark. 1936). Even in those
3 jurisdictions which have enacted statutes governing the award of attorney fees, the courts have awarded
4 fees on the theory that these fees are “necessary expenses” and available on the same principles as
5 temporary support. *See Smith v. Smith*, 330 So.2d 439 (Ala. 1976); *see also Weiner v. Weiner*, 290
6 A.2d 307 (N.J. 1972). Some courts have described the power to award counsel fees in matrimonial
7 actions as part of the court’s general equity jurisdiction, to be exercised in the court’s discretion, when
8 warranted by the parties’ relative abilities to pay. *See Mauldin v. Mauldin*, 275 P.2d 113 (Cal. Ct. App.
9 1954); *see also Zaruba v. Zaruba*, 498 S.W.2d 695 (Tex. App. 1973).

10 The courts have broad discretionary power to award counsel fees in cases involving domestic law
11 issues. *See Weschler v. Weschler*, 605 N.Y.S.2d 26 (N.Y. 1993) (holding that \$15,000 interim award
12 of counsel fees is a proper exercise of discretion in view of length of marriage, wife’s unemployment and
13 husband’s well-paying employment). *See also Foreng v. Foreng*, 509 N.W. 2d 38 (N.D. 1993) (holding
14 that a trial court abuses its discretion in the award of counsel fees only where the court has acted in an
15 arbitrary, unreasonable and unconscionable manner). In making an award of attorney fees, the principal
16 consideration is the relative financial resources of both parties. *See Montante v. Montante*, 627 So. 2d
17 554 (Fla. Dist. Ct. App. 1993) (holding that the failure to award attorney fees, given the husband’s superior
18 ability to pay, an abuse of discretion). Other considerations include whether litigation has been conducted
19 in good or bad faith. *See Dussart v. Dussart*, 546 N.W.2d 109 (S.D. 1996) (holding that trial court
20 abused its discretion in failing to award appellant wife’s attorney fees where appellee husband had admitted
21 creating a secret bank account during the parties’ marriage and using its funds to pay his attorney fees).

22 In the instant case, it is clear that an award of attorney fees and costs is appropriate. First and
23 foremost, the relative financial position of the parties required an award of attorney fees to Plaintiff.

24 Second, Defendant did not act in good faith in the course of the litigation. Not only did Defendant
25 perjure himself, he has attempted to dissipate and hide the assets of the marital estate. Plaintiff has incurred
26 substantial expense in prosecuting this action for divorce. Such costs and expenses have only increased
27 as a result of Defendant’s efforts to deny his marriage to Plaintiff, and the introduction of perjurious
28 testimony. Plaintiff shall be awarded all reasonable costs incurred in prosecuting this action including her

1 transportation expenses from Bangladesh and reasonable attorney fees. The Court, however, does not
2 include Plaintiff's lodging expenses on Saipan as part of the costs accessed in this subsection, given the
3 award of alimony retrospective to the date of filing of this action. Counsel for Plaintiff shall submit his cost
4 breakdown by November 27, 2002. Defendant shall be given until December 2, 2002, to file an objection
5 to such costs. The Court will issue a separate order on the amount due to Plaintiff for reasonable attorney
6 fees and costs.

7 **V. CONCLUSION**

8 NOW THEREFORE, for the foregoing reasons, with good cause appearing, it is hereby
9 ORDERED, ADJUDGED AND DECREED:

- 10 1. Judgment for Divorce is hereby entered against Defendant;
- 11 2. Plaintiff is awarded the marital property located in Bangladesh described in Plaintiff's Exhibit
12 2;
- 13 3. Plaintiff is awarded permanent alimony or spousal support for necessities in the amount of \$200
14 (U.S. dollars) per month, retroactive to the date of the filing of this Complaint - June 16, 1998, and such
15 payments shall continue until Plaintiff's death or remarriage;
- 16 4. Defendant shall pay retroactive child support from January 1995 to March 2000 in the amount
17 of \$3,876 (U.S. dollars); and,
- 18 5. Defendant shall pay for all reasonable costs and fees.

19
20
21 **SO ORDERED** this 29th day of November 2002.

22
23 /s/
24 VIRGINIA S. SABLAN-ONERHEIM, Associate Judge