

1 Medina remained in the CNMI. Mr. Medina visited the Philippines twice since 1997; once from
2 October 20, 2001-November 5, 2001 (Pet'r's Ex. K), and again from September 1, 2017-
3 September 27, 2017 (Pet'r's Ex. N). The record is silent as to what, if any, contact the parties had
4 up until Mr. Medina's return to the Philippines in 2001. It is asserted and uncontested, that during
5 his 2001 visit, Mr. Medina conceived a second child with Respondent.

6 **B. Marriage to Petitioner**

7 Antonia R. Medina, a Chuukese woman, and the decedent Gil R. Medina, a Filipino man,
8 were married on April 2, 1997 in Chuuk, FSM. (Pet'r's Exs. A, B). At all times relevant to this
9 matter, the Petitioner and Mr. Medina resided together in Saipan, CNMI. The validity of
10 Petitioner's marriage to Gil Medina is not in dispute.

11 At the time of the marriage, Petitioner had three children from a previous relationship.
12 Beginning November 28, 2011, Mr. Medina has received Humanitarian Parole from the United
13 States Department of Homeland Security based upon Petitioners marriage to him, and their reared
14 son, biological grandson. (Pet'r's Ex. O). Petitioner and Mr. Medina filed for joint bankruptcy in
15 2007, and have filed joint taxes continuously since fiscal year 2012. (Pet'r's Ex. E-I, V).

16 **C. Death of Gil Medina**

17 On December 19, 2017, Gil Medina committed suicide at their shared home. He left a
18 handwritten suicide note addressed to Petitioner, her children, and their grandchild/reared son.
19 (Pet'r's Ex. D). Arrangements were made for a funeral viewing and cremation with Borja Funeral
20 Home to take place January 9, 2018. (Pet'r's Ex. U). Petitioner was approached on January 8, 2018
21 by Anna Mae Adaza, a representative from the Philippines consulate. Ms. Adaza informed
22 Petitioner of Mr. Medina's alleged marriage to Respondent in 1993 in Saipan and of Respondent's
23 claim to Mr. Medina's body. Respondent is against the cremation of Mr. Medina's body, and
24 would like the body to be repatriated back to the Philippines to be buried by herself and the two
25 children she had with Mr. Medina. Respondent asserts she was validly married to Mr. Medina and

1 has a right to dispose of the body as she chooses. Petitioner asserts that the marriage to Respondent
2 is invalid, as it failed to comply with §1201-4 of the Commonwealth Code.

3 A search of the marriage record conducted on January 25, 2018 did not disclose any
4 records of marriage between Respondent and Mr. Medina. (Pet'r's Ex. C).

5 III. LEGAL STANDARD

6 The Commonwealth Superior Court shall have original jurisdiction in all cases in equity and
7 at law. N.M. CONST. ART IV, §2; *see generally Nakatsukasa v. Superior Court*, 1999 MP 25. This
8 action comes before the Court as a Petition for Declaratory Judgment. The Superior Court has
9 jurisdiction of the matter where:

10 In a case of actual controversy within its jurisdiction, the Commonwealth Trial
11 Court, upon the filing of an appropriate pleading, may declare the rights and other
12 legal relations of any interested party seeking the declaration, whether or not
13 further relief is or could be sought. Any such declaration shall have the force and
14 effect of a final judgment or decree and shall be reviewable as such. Further
15 necessary or proper relief based on a declaratory judgment or decree may be
16 granted, after reasonable notice and hearing, against any adverse party whose
17 rights have been determined by the judgment.

18 7 CMC §2421.

19 IV. DISCUSSION

20 The matter before this court is one of first impressions. The issue is whether a marriage
21 ceremony performed in a foreign consulate, not in compliance with local law, is valid and
22 enforceable by the local Court. Petitioner makes the argument that because CNMI statute was not
23 followed, the marriage ceremony between Respondent and Mr. Medina did not create a valid
24 marriage. Counsel for Respondent argues that Mr. Medina and Ms. Bonifacio were not required to
25 comply with local law, because the consulate is sovereign territory, and their marriage was
presumptively legal in the Philippines. This Order will address each of those arguments.

The first section will address Petitioners argument and an analysis of CNMI marriage laws.
Next is an analysis of international law and treaties as they pertain to the application of local laws

1 in consulates. The next section will cover Respondent’s argument relating to foreign soil and
2 sovereignty. Finally, the last argument will analyze of the validity of the alleged marriage under
3 Filipino law. The Conclusion will set forth this Courts orders and Conclusions.

4 **A. Failure to Comply with Local Marriage Law Invalidates a Marriage**

5 The marriage between Mr. Medina and Ms. Bonifacio did not comply with several strict
6 statutory requirements. There is a long history in the United States of requiring persons who wish
7 to be married to comply with certain essential actions, before their union can be deemed legally
8 valid. *See e.g., Islam v. Islam*, 2009 MP 17 ¶19; *Lockyer v. City and County of San Francisco*, 33
9 Cal. 4th 1055, 1077 (2004); *Farah v. Farah*, 16 Va. App. 329, 332 (1993). The validity of a
10 marriage will depend, primarily, upon compliance with the requirements of the marriage law
11 where the alleged marriage takes place. *See American Banana v. United Fruit Co.*, 213 U.S. 347,
12 356 (1909) (“the general and almost universal rule is that the character of an act as lawful or
13 unlawful must be determined wholly by the law of the country where the act is done.”). Moreover,
14 “if local law dictates compliances with certain formalities as essential, failure to meet these
15 requirements will be detrimental to the recognition of the marriage elsewhere.” *Jordan v. Missouri*
16 *& Kansas Tel. Co.*, 116 S.W. 432, 433 (1909) (holding two persons cannot contract a valid
17 marriage when either of them can unilaterally dissolve the union due to failure to comply with
18 marital statutes). The proposition that local laws must be met to have a valid marriage is similarly
19 evident in *Canale v. People*, 52 N.E. 310, 311 (1898) where the Court found that defendant's
20 conviction of polygamy could not be sustained because his first marriage which allegedly took
21 place in another country was void because none of the provisions for a valid marriage in the
22 foreign country were complied with. In *Canale*, the Court determined that “because the first
23 marriage was invalid in the place where it was celebrated, it was invalid everywhere.” *Id.*

24 The Commonwealth Trial Court has jurisdiction to grant any adoption, annulment
25

1 or divorce authorized under 8 CMC §1 101 . Under the CMC, a valid marriage must include:

2 (a) The male at the time of contracting the marriage be at least 18 years of age
3 and the female at least 16 years of age, and if the female is less than 18 years of
4 age she must have the consent of at least one of her parents or her guardian;

5 (b) Neither of the respective parties has a lawful spouse living; and,

6 (c) A marriage ceremony be performed by a duly authorized person as provided in
7 this chapter.

8 8 CMC §1201. A duly authorized individual who may grant a marriage license is defined as the
9 Governor or Mayor. 8 CMC §1202. The marriage certificate must then be sent to the clerk of
10 courts of the Commonwealth Trial Court to be recorded in the marriage register. “Forms issued by
11 the Governor for the marriage certificates shall be used when available, but lack of these forms
12 does not excuse failure to provide... the clerk with the copy required above in substantially the
13 same form, and containing the same information as in the forms issued by the Governor.” 8 CMC
14 §1204.

15 In the case at hand, Mr. Medina and Ms. Bonifacio were married by the Philippine Consul
16 in the Philippine Consulate. While both parties were over the age of eighteen (18), there is no
17 evidence they were ever issued a license by the CNMI Mayor or Governor. Additionally, as
18 evidenced by Petitioner’s Exhibit C, there is no record of the marriage license or certificate being
19 registered with the Clerk of Court. This failure to comply with CNMI marriage statutes is fatal to
20 the validity of the marriage. Respondent argues that because the marriage was performed in the
21 Philippine Consulate, it need only comply with Philippine law, and not local CNMI laws. The
22 Court finds this argument unpersuasive for the following reasons.

23 **B. International Treaties Governing Consulates Require Compliance with Local**
24 **Laws**

25 Despite Mr. Medina and Ms. Bonifacio’s marriage being solemnized by a Consular
Officer, it was still required to follow local law. The validity of marriages performed by foreign

1 consuls depends on local laws. U.S. State Dept.¹ The Vienna Convention on Consular Relations
2 (Vienna Convention), which both the United States and the Philippines are signatories to, states in
3 part: consular officers may act as notary and civil registrar and in capacities of a similar kind, and
4 perform certain functions of an administrative nature, *provided that there is nothing contrary*
5 *thereto in the laws and regulations of the receiving State.*² The Vienna Convention on Consular
6 Relations, Art. 5(f) (1963) (emphasis added). A marriage that does not conform to the laws of the
7 country or state in which it was performed generally is voidable and may be declared void by an
8 appropriate authority, usually a court in the jurisdiction where the marriage occurred. 7 Foreign
9 Affairs Manual (FAM) §1457.3. The Supreme Court has recently held that the marriage statutes
10 of the CNMI are mandatory and “ostensibly reflect the legislature’s intent to void other forms of
11 marriage which do not comply with these requirements.” *Santos v. Commonwealth*, 2017 MP 12
12 ¶18. In *Santos*, the Court invalidated a thirty-five year common law marriage after holding
13 common law marriages contrary to public policy, and the intent of the legislature. *Id.*

14 The Civil Law of the Philippines states “All marriages performed outside the Philippines *in*
15 *accordance with the laws in force in the country where they were performed*, and valid there as
16 such, shall also be valid in this country. CIVIL CODE, ART. 71(emphasis added). Article 17, of the
17 same code makes clear that the “forms and solemnities of contracts, wills, and other public
18 instruments shall be governed by the laws of the country in which they are executed.” CIVIL CODE,
19 CH. 1, ART 17. This is referred to as the *lex loci celebrationis*, and is followed in much of the
20 United States. *See generally Pritchard v. Norton*, 106 U.S. 124; *Christiansen v. Christiansen*, 2011
21 WY 90; *Lewis v. Fullerson*, 22 Va. 15.

22 Here, Mr. Medina and Ms. Bonifacio failed to comply with both the license and
23 registration requirements of CNMI law; both mandatory. They were required by statute to observe

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25 ¹ <https://fam.state.gov/fam/07fam/07fam1450.html>.

² https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtds_g_no=III-6&chapter=3&lang=en

1 the local laws to be legally married; their failure to do this created an invalid marriage. As
2 signatories to the Vienna Convention, both the United States and the Philippines agreed to obey
3 the mandates of the treaty. They were afforded certain special privileges in the governing of their
4 citizens abroad, only so far as there was nothing contrary to local law or regulations. In that
5 instance, they would have no statutory authority. Under the requirements of the Vienna
6 Convention, Respondent and Mr. Medina were not legally married.

7 **C. In the Case of Marriages, the Philippine Consulate is not Foreign Soil**

8 Respondent makes the argument that the Philippine Consulate is in fact foreign soil, and as
9 such is subject to sovereign immunity. Any actions taking part at the Consulate would then have
10 the same effect as if they had been performed in the Philippines. International law however, does
11 not follow this stance because, for obvious policy reasons, a sovereign country could not simply
12 give a piece of their country to another sovereign power and remain sovereign. Conway W.
13 Henderson, *Understanding International Law* 162-63 (2010) (citing *Radwan v. Radwan*, 1972, 3
14 W.L.R. 735); *see also In re Hall*, 70 N.Y.S. 406 (1901) (finding that in those States where licenses
15 to marry are required, an attempted marriage without a license is void absolutely. The Court held
16 that “[w]ithin its own borders each state has sovereign control over all persons and property there
17 situated, either permanently or temporarily... it is in its power to declare in any form of proceeding
18 it sees fit.”). If allowing an embassy or consulate into a country automatically made the land
19 foreign soil, there would be no need to include permissions or the granting of authority by the host
20 country. *See J.R. v E.M.*, 44 Misc. 3d 1211(A) at *13 (2014).

21 The Consular Convention Between the United States of America and the Republic of the
22 Philippines (“Consular Convention”) lays out very specific rules and regulations relating to
23 everything from communications, to the type of building and signage allowed by consular officers
24 and consulates. *See generally* The Consular Convention Between the United States of America and
25 the Republic of the Philippines, U.S.-Phil., 11 Bevans 74, 1947 U.S.T. 394. If the land upon

1 which a consulate rests was in actuality foreign soil, neither country would be legally allowed to
2 dictate those specifications. *See* Blacks Law, (6th ed. 1194) (defining sovereignty as “the supreme,
3 absolute, and uncontrollable power by which any independent state is governed; supreme political
4 authority; the supreme will; paramount control of the constitution and frame of government and its
5 administration”). The Consular Convention allows Consular Officers:

6 To draw up, attest, certify, and authenticate unilateral acts, deeds, contracts,
7 testamentary dispositions and written instruments of any kind, which are intended
8 to have application, execution, and legal effect principally in the territories of the
9 High Contracting Party by which the consular officers are appointed. Instruments
10 and documents thus executed . . . shall be received as evidence in the territories of
11 either High Contracting Party as original documents . . . and shall have the same
12 force and effect as if drawn by or executed before a notary or other public officer
13 duly authorized in the territories of the High Contracting Party by which the
14 consular officer was appointed; *provided, always, that such documents shall have
15 been drawn and executed in conformity with the laws and regulations of the
16 country where they are designed to take effect.*

17 Consular Convention, 1947 U.S.T. Art. VIII(1)(d)-(2). (emphasis added).

18 Consulates have many special privileges, but Respondent provides no authority that states
19 the land the Consulate sits on is considered foreign soil. While Consulates may be immune from
20 search and seizure, taxes and arrest warrants, they must still comply with local laws where
21 applicable if they want their actions to have legal force within the host country. Therefore,
22 Respondent’s argument fails to establish that the law of the Philippines applies to the marriage.
23 From the testimony of the parties, evidence presented in Court, and the very existence of this
24 matter before this Court, it is clear Ms. Bonifacio and Mr. Medina intended for their marriage to
25 have effect in the United States. Respondent is seeking to have her marriage ceremony validated
by this Court, and enforced by this Court so that she may repatriate Mr. Medina. She is seeking to
have a noncompliant marriage ceremony deemed valid merely because it took place in a unique
location within the CNMI.

D. Under Philippine Law the Marriage is Considered Invalid

1 An argument can also be made that the marriage ceremony between Mr. Medina and Ms.
2 Bonifacio does not comply with Philippine law. The Philippine law governing marriages is located
3 in the Family Code of the Philippines and the Civil Code. FAMILY CODE, ART. 2-3; Civil Code, Art
4 58. Articles 2 and 3 of the Family Code contain two categories of marriage requirements, essential
5 requisites, governing the substance of the contract, and formal requisites, controlling procedural
6 requirements. FAMILY CODE, ART. 2-3. Both requisites must be satisfied to legally contract a
7 marriage. *Id.* Essential requisites require the parties to have legal capacity, and freely given consent
8 in the presence of a solemnizing officer. *Id.* The formal requisites require the officer to have
9 solemnizing authority, a valid marriage license except for marriages of exceptional character; and a
10 marriage ceremony before the solemnizing officer with a personal declaration that they take each
11 other as husband and wife in the presence of not less than two witnesses of legal age. *Id.; Islam v.*
12 *Islam*, 2009 MP 17 ¶13.

13 While Philippine Consular Officers are authorized to solemnize marriages between two
14 Filipinos of the states under the jurisdiction of the Embassy/Consulate General, they are not
15 allowed to issue licenses.³ The Philippine Civil Code requires that no marriage may be solemnized
16 without a marriage license first being issued by the local civil registrar of the municipality where
17 the contracting parties habitually reside, except in the case of marriages of an exceptional character.
18 CIVIL CODE, ART 58. Article 72 defines a marriage of exceptional character as one where either
19 contracting party is on the point of death, or the female is more than fifteen (15) kilometers from
20 the municipal building without “communication by railroad or by provincial or local highways, the
21 marriage may be solemnized without necessity of a marriage license.” CIVIL CODE, ART 72.

22 There is no evidence presented to this Court that a marriage license was every issued by the
23 local civil registrar. The Consul was not an authorized person whom could issue licenses not in

24 ³ <http://www.philippineembassy-usa.org/philippines-dc/consular-services-dc/faq-dc/#civil>.

