

1 **For Publication**

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

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JULITA OMAR AGWO,)

FCD-DI CASE NO. 04-0444

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Plaintiff,)

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vs.)

**ORDER GRANTING PLAINTIFF'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT ON
JURISDICTION**

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CHARLES OKECHUKWU AGWO,)

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Defendant.)

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This matter came before this Court on Plaintiff Julita Omar Agwo's ("Mrs. Agwo") *Motion for Partial Summary Judgment on Jurisdiction*. Mrs. Agwo was present and was represented by Jane Mack Esq, of Micronesian Legal Services. Mr. Agwo was not present and was not represented by counsel. Proper service was made on the Commonwealth via the Attorney General's Office, but no opposition to Mrs. Agwo's motion was filed by the Commonwealth. The Commonwealth was not represented in court during the hearing. The Court, having read the moving papers and having heard the argument of Mrs. Agwo's counsel, enters the following decision.

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FACTUAL BACKGROUND¹

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Julita Agwo was born in Saipan on April 15 1967. She attended school and lived most of her life in Saipan. She stayed in Guam for approximately four months in late 1984 when she gave birth to her first child because her parents had moved to Guam. She returned to Saipan in January, 1985 and continued living here. She met Charles Okechukwu Agwo, a Nigerian, in Saipan and married him, in Saipan, on March 6 1999.

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The couple lived together, in Saipan, until June 2002, when they moved to Kansas City, Missouri and lived with Mrs. Agwo's niece. Mrs. Agwo kept her car and homestead permit in

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¹ The facts are taken from Plaintiff's *Memorandum in Support of Jurisdiction*.

1 Saipan. She also maintained her driver's license and voted in Saipan. She never established
2 domicile in Missouri.

3 By May, 2003 the parties separated. After the separation, Mrs. Agwo visited her adult son
4 at the military base where he is stationed in Virginia and then returned to Saipan in June 2003. She
5 is now seeking a divorce from her husband.

6 DISCUSSION

7 This is a case of first impression within the CNMI. Mrs. Agwo is requesting that this Court
8 strike down the residency requirement of the CNMI divorce statute as unconstitutional. 8 CMC §
9 1332 states: "No divorce shall be granted unless one of the parties shall have resided in the
10 Commonwealth for the two years immediately preceding the filing of the complaint." Mrs. Agwo
11 has been on island for only one year preceding the filing for divorce and, is therefore, effectively
12 barred under the statute from seeking a divorce here in the Commonwealth. The issue before the
13 Court is whether the Commonwealth of the Northern Mariana Island's divorce statute is
14 unconstitutional on its face and as it applies to Julita Agwo. Mrs. Agwo asserts that § 1332 denies
15 her liberty, due process, equal protection and burdens her fundamental constitutional right to
16 interstate travel.

17 In her moving papers, Mrs. Agwo sets forth a constitutional analysis of the durational
18 residency requirements in jurisdictions throughout the U.S.² Mrs. Agwo demonstrates how several
19 courts have considered the constitutionality of a two- year durational residency requirement and
20 have struck them down as unconstitutional. Specifically, Mrs. Agwo argues that the courts in cases
21 such as *Wymelenberg vs. Syman* 328 F.Supp 1353 (E.D. Wis. 1971); *Larsen vs. Gallogly*, 361 F.
22 Supp. 305 (D.R.I. 1973); and *Fiorentino vs. Probate Court*, 310 N.E. 2d 112 (Mass, 1974) have

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24 ² Mrs. Agwo presented the Court with a statistical breakdown of the durational residency requirement of each state. States
25 which have a one year residency requirement include: Connecticut, Iowa, Massachusetts, Maryland, Nebraska, New Hampshire, New
26 Jersey, Rhode Island, South Carolina, West Virginia and Louisiana. States which have a six month residency requirement include:
27 Alabama, California, Kentucky, Michigan, Minnesota, Mississippi, Indiana, New Mexico, North Carolina, North Dakota, Ohio,
28 Oklahoma, Pennsylvania, Texas, Vermont, Virginia, Washington, D.C., Wisconsin and Maine. The states which require 90 days are:
Arizona, Colorado, Guam, Hawaii, Illinois, Missouri and Montana. Arkansas, Kansas and Wyoming require 60 days. Nevada
requires 6 weeks of residency. Finally, Alaska, South Dakota and Washington have a "mere residency" requirement. *Petitioner's
Motion* Appendix 2. New York and Maryland do have a two-year limitation only for very limited circumstances. For example,
Maryland requires a two-year residency if and only if the grounds for divorce are insanity. See *Petitioner's Motion* p. 12.

The CNMI is the only U.S. jurisdiction which has an unqualified two-year limit before filing for a divorce.

1 found that a two -year residency requirement is a burden on an individual’s right to travel. The
2 courts which have considered the residency issue do recognize the importance of protecting the state
3 against fraudulent claims of divorce and also protecting the state from becoming a divorce mill.
4 Additionally, courts have held that the state has an interest and a right to regulate marriage. See
5 *Sosna vs. Iowa*, 419 U.S. 393 (1975). However, the courts have also recognized that the state must
6 demonstrate that the duration of the residency requirement for the purposes of divorce is sufficiently
7 tailored to satisfy those legitimate state concerns. *Fiorentino supra*.

8 Mrs. Agwo asserts that the proper standard for evaluating 8 CMC § 1332 is under an equal
9 protection “strict scrutiny” analysis. *Attorney General, New York vs. Soto-Lopez*, 476 U.S. 898, 106
10 S. Ct. 2317 (1986). This test dictates that the state must demonstrate that a residency requirement
11 is necessary to accomplish a compelling government interest. Mrs. Agwo then questions the
12 CNMI’s rationale for enacting a two-year residency requirement. Mrs. Agwo points out that the
13 statute which created the two-year residency requirement hails from the Trust Territory era. See
14 *Hamrick vs. Hamrick*, 6 T.T.R. 252 (Marianas 1973). The *Hamrick* court held that the “two-year
15 durational requirement held a “special logic” because the TTPI government employed a large
16 number of American citizens on two-year contracts and it was reasonable to believe that only those
17 who stayed in the CNMI beyond that time period had the intent to [become] domicile[d] in the
18 CNMI.” See Petitioner’s *Memorandum in Support of Jurisdiction* (“Petitioner’s Memo”).³ Mrs.
19 Agwo argues that the concerns and rationales of the High Court of the TTPI over forty years ago in
20 *Hamrick* no longer apply in the CNMI.

21 The Court is not going to address the broad constitutional concerns at this time. Instead, the
22 Court will focus on the particular facts of this case. Julita Omar Agwo is 38 years old and was born
23 and raised on Saipan, CNMI. Her schooling was completed here, she has property here, she votes
24 here and she holds a valid CNMI drivers license. She has been off-island for a period of one year
25 and four months during her entire lifetime. The parties, both Mr. And Mrs. Agwo, recognized and
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27 ³ It is arguable whether this “special logic” was logical at all even during the Trust Territory period. It is patently absurd
28 today in the CNMI where a significant number of “guest” workers from the Philippines, China, Korea and Bangladesh have worked
here for two years or more and have had the use of our courts in obtaining divorces from their spouses in their home nations.

1 accepted the jurisdiction of the CNMI when they wed here in 1999. Mrs. Agwo's temporary
2 absence to travel with her husband should not now be used as a barrier to shut her out of halls of
3 justice. In the interest of fairness, the Court cannot reject Mrs. Agwo's plea to now avail herself of
4 the jurisdiction of this Court, her home court, to terminate her marital bonds.

5 **CONCLUSION**

6 Although the Petitioner has made a valid argument as to why the durational residency
7 requirement of 8 CMC § 1332 should be struck down as a violation of the constitution, the Court
8 is unwilling to extend it that far. This Court does believe that a change to the durational limit is long
9 overdue, but such a change should be accomplished by the Legislature. However, the Court finds
10 that for the purposes of the statute as it now reads, Mrs. Agwo's one year leave of absence from
11 Saipan does not preclude her from availing herself of the jurisdiction of this Court.

12 The Court cautions those who may think that this decision is a "loophole" in the two-year
13 durational requirement before the filing of the divorce. Mrs. Agwo's circumstances are unique and
14 the Court has rendered its decision on the very narrow set of facts which were presented in this case.
15 Any other such departures from the current statute will be strictly construed to apply to persons who
16 face a factual situation similar to Mrs. Agwo's. Therefore, for good cause appearing, Petitioner's
17 *Motion for Partial Summary Judgment on Jurisdiction* is **GRANTED** and Mrs. Agwo may file for
18 divorce in accordance with 8 CMC § 1332.

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21 **IT IS SO ORDERED** this 11th day of March 2005.

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23 /s/
24 KENNETH L. GOVENDO, Associate Judge