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Consultation Scenarios Involving Questionable and Fraudulent Marriages: Practice Tips Before Taking on a Marriage-Based Immigration Case

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**Consultation Scenarios Involving Questionable and Fraudulent Marriages:
Practice Tips Before Taking on a Marriage-Based Immigration Case**
by Nicolas Chavez, Irene G. Mugambi and Ruby Powers

Or another apt title would be *Marriages That Make You Go ‘Hmm’ (or ‘Ugh.’)* As immigration lawyers practicing in the rewarding field of spousal immigration, we are sometimes faced with the undesired challenge of trawling through information about the couple, deciphering what is true and what is not. If you are having doubts about the marriage, you can bet the USCIS adjudicator will.

In this article, we examine three common situations you may encounter while consulting with a foreign national about seeking or preserving legal resident status based on marriage, particularly where the bona fides of the relationship are (or were) in question. We offer some information and practice tips to think about before *you* say ‘I do’ and commit yourself to the case.

Scenario #1 –Prospective clients recently got married in a court ceremony. They’ve known each other for only several months. The beneficiary shows up to your office by himself and says he is ready to start the process of getting a green card based on marriage. What things does a prudent attorney need to assess at the initial consultation?

The most common situation we face is when a client walks into your office and wants to apply for lawful permanent residence (or “green card”) based on marriage. You may only have a small amount of time to determine if the couple has a genuine relationship. As you consult with a prospective client, you must be cognizant of the burden of proving a good faith marriage—the keystone of every spousal immigration petition. The petitioning spouse must prove the validity of the marriage by a preponderance of the evidence if the beneficiary is not married while in removal proceedings, in which case the burden is higher.

At the consultation stage you should be prepared to identify signs that might cast doubt on the validity of the marriage. But not all suspicious relationships are fraudulent (as not all fraudulent marriages are suspicious at first blush). It is your job to determine what can be reasonably (and truthfully) explained and what cannot, and prepare your clients accordingly.

Potential Signs of Fraud

Unless there is something obviously fraudulent about the marriage (e.g., like the client admitting to you that it is a sham), sometimes all we are left with are clues to sift through. Below are some red flags practitioners should watch for during consultation:

a. The loner (or the loner, plus another person who is not the spouse)

At the initial consultation, pay attention to who appears for the consultation. Ideally both parties should appear in person at the initial consultation. (After all, this is a major life-changing

decision for both people, right?) But sometimes it's just the beneficiary. Other times, it's the beneficiary with someone else who is unrelated to the petitioner.

In the above scenario, the prospective client appeared by himself and expressed an interest to start the case without his wife being present. Always ask why the other spouse is not present or available. If there is someone else who the beneficiary brought to the consultation other than the petitioner, ask who that person is and the relationship to the beneficiary.

If there doesn't seem to be a valid reason for the petitioner not being present, then offer to have her return for a further consultation. As you screen the case, you should be on the lookout for possible marriage fraud if she fails to appear at the next consultation.

Here are some other factors when consulting with a couple or a prospective beneficiary:

b. Demeanor

This is probably the hardest clue to discern because one or both spouses may just be having a lousy day or it could just be a personality issue. But being observant of unnatural behavior can still be a useful tool in screening for fraud.

During the consultation phase, a practitioner should closely observe to see if the couple appears comfortable with each other. They should be able to communicate with each other, and the dialogue between the two should be natural. If the petitioner seems detached and unconcerned about the process, think about how obvious this will appear to USCIS and how frustrating it will be to have them as clients. Feel free to be candid with the couple and express your concerns about their behavior that may raise questions later during an I-130 interview. Listen to their explanations and observe their reactions closely.

If the beneficiary comes to your office alone, observe if he or she appears uncomfortable with your questions about the relationship.

c. Grossly mismatched

A couple may openly seem mismatched, e.g., socio-economically, educationally, age. For example, the petitioning spouse may be considerably older, just out of the prison after a 20-year sentence and, after a very short dating period, now married to a much younger woman who just arrived in the country and barely able to speak English. Naturally, USCIS may have questions about their compatibility.

Another potential clue is income disparity. For example, a petitioner who is unemployed, has a very low income, or who is on public welfare, may be motivated to enter into a fraudulent marriage to improve his or her own economic situation.

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