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OPINION COMMITTEE

State of Texas
House of Representatives



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I.D. # 47136

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September 25, 2012

RQ-1086-GA

The Honorable Greg Abbott
Attorney General
State of Texas
P.O. Box 12548
Austin, Texas 78711-2548

Dear General Abbott:

I would like to request an official opinion concerning a potential conflict of law between Texan Family Law and U.S. Immigration Law. My specific question is listed below.

Background:

An individual's husband, a native and citizen of India, holds a master's degree in Computer Science and is presently in the U.S. on a temporary worker visa. In February, 2011, the individual married her husband in India. She filed to join her husband in the U.S. on an H-4 visa (spouse of a temporary worker) and was denied issuance of the visa by the U.S. Consulate in Chennai, India. The consular officer requested that the individual obtain a legal opinion from the Texas Attorney General stating that "marriage between two first cousins is legal per Texas statutes."

Question:

Is a marriage between an adult male and female, entered into in full accordance with the Hindu Marriage Act of India, valid under Texas law when the married individuals are related as first cousins and reside in Texas?

Legal Argument:

In Texas, every marriage is presumed valid and the courts will uphold a marriage against claims of invalidity unless a strong policy reason exists for holding the marriage void or voidable. Tex. Fam. Code § 1.101. Where a presumption of validity exists, a marriage is deemed valid unless

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expressly declared void by another provision of the Texas Family Code. The Code lists only four marriages which are void based on familial relationships. A marriage is void under Texas law if one party to the marriage is related to the other as: 1) an ancestor or descendant; 2) a brother or sister; 3) a parent's brother or sister; or 4) a son or daughter of a brother or sister. Tex. Fam. Code § 6.201. Those marriages would be void as a matter of law in Texas even if valid in the state where the relationship was created. First cousins, however, are not included in this list.

Furthermore, where a particular type of marriage is void or contrary to the public policy of Texas, the Code is not ambiguous. For example, § 6.204 expressly states that same-sex marriages and civil unions are "contrary to the public policy of this state" and are "void in this state." Tex. Fam. Code § 6.204(b). If marriage between first cousins were contrary to Texas policy and void, the Legislature would undoubtedly have declared it in the Code.

Because marriages in Texas are presumed valid unless declared void in the Texas Family Code, the absence of a provision voiding such a marriage indicates a clear legislative intent that such a marriage will be recognized by the State of Texas. The Code contains no provision voiding marriages between first cousins, nor does it declare that such marriages are against the public policy of Texas. It is clear, then, that marriages between first cousins are valid under Texas law.

Thank you for your attention to this issue. Should you have any questions concerning this request, please feel free to contact Martin Lujan in my Capitol office at 512-463-0566.

Sincerely,



Pete P. Gallego

PPG/ml