



## THE STATUS OF INTERNET PROXY MARRIAGES UNDER IMMIGRATION LAW

*Posted on March 11, 2013 by Cyrus Mehta*

A recent article in the New York Times entitled [You May Now Kiss the Computer Screen](#) caught my interest. The article highlights a rise in marriages over the internet, especially through a video chat program Skype, among immigrant communities. “The practice is so new that some immigration authorities said they were unaware it was happening and did not provide extra scrutiny to ensure these types of marriages were not being misused to secure citizenship,” the article states.

A “Skype marriage” takes place in another country where it is legally registered while the other party participates via video in the United States. If the marriage is considered legally valid in the foreign country, it will generally be recognized in the US. On the other hand, such a marriage is considered a [proxy marriage](#), and under §101(a)(35) of the Immigration and Nationality Act (“INA”), if the parties were not in each other’s presence at a marriage ceremony, there must be proof of consummation for such a marriage to be recognized under immigration law. This is true even in the case of a couple who were previously married and had consummated their marriage through the birth of three children, and then divorced. They remarried through a proxy marriage that was valid in Italy, but since there was no proof of consummation following that marriage, the visa petition filed on behalf of the spouse was denied. See [Matter of B-](#), 5 I&N Dec. 698 (BIA 1954).

Thus, internet marriages, even on the rise, will not be recognized under immigration law unless the parties establish that there was consummation. In addition, there is a requirement that every marriage, proxy or not, be bona fide and not be entered into solely to obtain a green card. Indeed, INA §204(c) imposed a lifetime bar to a new petition being approved on behalf of a

beneficiary who was previously involved in marriage fraud.

The immigration authorities do not require definitive proof of consummation, and proof of the two parties being together physically after the celebration of their proxy marriage, along with a statement affirming consummation, ought to suffice. In fact, non-proxy marriages do not require consummation to satisfy the bona fide marriage test. In *Matter of Peterson*, 12 I&N Dec. 663 (BIA 1968), the fact that an elderly couple lived in separate bedrooms and had not engaged in sexual intercourse did not preclude the demonstration of a bona fide marriage. Also, a marriage would still be considered bona fide even though it is no longer viable because the couple have separated as a result of marital discord. See *Matter of McKee*, 17 I&N Dec. 332 (BIA 1980).

The advent of increasingly sophisticated internet-based technologies have changed the way we live and work, and the law has yet to catch up. For example, telecommuting employees were unheard of before the internet, and I have commented on how existing H-1B visa rules defining a worksite have not been able to cope with this trend in [LCAs in the Age of Telecommuting](#). Internet marriages are another example of this trend, and the couple in the NYT article, Ms. Chowdhury (who is in New York) and Mr. Ahmmed (who is in Bangladesh), notwithstanding the unconventional nature of the celebration appear to have entered into a bona fide marriage. The following extract from the article is worth noting:

*But for Ms. Chowdhury, 21, and Mr. Ahmmed, 31, the giggling pair pretending to feed each other wedding dessert by holding forkfuls of cake to their computer screens that day, it felt full of the gravity of any other wedding. Ms. Chowdhury noted that her aunt had married similarly, long before the Internet age — by telephone.*

*Peering from the screen of a laptop, Mr. Ahmmed agreed. “This is my lawful wife,” he said.*

*At the last word, his bride squealed with joy.*

Even if one argues that a Skype marriage may have all the trappings of a marriage where the parties are physically in each other's presence (and can also be intimate via video), it is doubtful whether Congress will be in a mood to change the law to make it easier for such marriages to be recognized for immigration purposes. There is too much of a concern for fraud, and such

proxy marriages could also involve forced marriages of women and children without their consent. They could also be used by sex traffickers to bring in women who then unwittingly find themselves involved in sex work in the US.

Interestingly, the non-recognition of a proxy marriage helped someone to successfully claim he was a US citizen and avoid deportation. In [\*Moussa v. INS\*](#), 302 F.3d 823 (8th Cir. 2009), the government commenced removal proceedings against Moussa based on several criminal convictions. Moussa, on the other hand, claimed he became a citizen at the time of his father's naturalization and could not be deported as a US citizen. Moussa's claim depended on whether his father was married to his non-citizen mother or not at the time of the father's naturalization. Under old INA §321 which has since been repealed, both parents had to be citizens if they were married in order for Moussa to have become a US citizen. However, if his father was not married to his mother, Moussa could claim derivative citizenship through his father. The government claimed that the parents were married as a result of a proxy marriage while Moussa's mother was in Ethiopia and so he was not a citizen. The Eight Circuit Court of Appeals agreed with Moussa that such a marriage was not recognized under INA §101(a)(35) as the parents had not consummated the marriage before his father was naturalized and he was thus a citizen. As a result, Moussa could not be deported for his criminal convictions.

So long as §101(a)(35) remains on the books, notwithstanding the rise of internet marriages, those wishing to seek an immigration benefit from such marriages must first be able to demonstrate that they commenced marital relations after such a marriage. Even if such a marriage passes muster under §101(a)(35), unless the couple have started cohabiting together, the immigration authorities are likely to look at such marriages more suspiciously in determining whether such a marriage is bona fide or not.