

by Catharine M. Venzon

Many legal practitioners overlook the legal services that may be rendered to aliens in matrimonial situations. For purposes of this discussion, an alien is a non-citizen who is physically present in the U.S. without regard to his or her immigration status. Such alien may be here lawfully or unlawfully. Nationally, there are millions of aliens. These aliens can now have access to New York State Courts for matrimonial actions.

The threshold problem confronting aliens desiring to pursue a matrimonial action in New York State is the ability to satisfy the term "residence," as set forth in Domestic Relations Law Sections 230 and 231, in order to enable the Court to obtain jurisdiction. When proper jurisdiction is found to exist, the defendant can be served anywhere in the world, pursuant to CPLR Sections 301 and 302.

Traditionally, the term "residence" was equated with "domicile," incorporating within its meaning the intention to maintain a permanent home in the particular jurisdiction. This requisite intent of permanency conflicted with the temporary status of many aliens. It was questionable whether an alien on a temporary visa could, at the same time, possess the requisite intent to satisfy the requirements of DRL Sections 230 and 231.

In *Langlais v. Langalis*, 90 Misc.2d 20, 393 N.Y.S.2d 292 (1997), the Court addressed this issue and the term "residence" was interpreted to mean, simply, "dwelling," regardless of future intent. The word "residence" in DRL Section 230 is not to be read as "domicile." The Courts need not look to the future intent of the parties. This more expansive interpretation has enlarged the jurisdiction of our Courts, thereby permitting aliens to maintain matrimonial actions and exercise their rights to our Courts.

New York Courts now consider immigration status as only one factor among many when evaluating jurisdiction. They explore the various relationships between the parties and the State, including but not limited to the marital residence, personal interests and marital affairs of the parties, even when residence and perhaps "domicile" remain in another country. *DePena v. DePena*, 31 AD 2d 415, 298 N.Y.S. 2d 199 (1969).

Many of these issues were directly addressed in the case of *Coran v. Coran*, 84 Misc.2d 335, 375 N.Y.S. 2d 797 (Sup. Ct. Kings County, 1975), wherein the Court held that pursuant to DRL 230 and 231, if a married woman dwells within the state when she commences an action for divorce, she is deemed a resident thereof, providing the statutory jurisdiction requirements are met. In that case, the cause of action arose while the couple resided in the state. The wife, after the marriage, obtained a visa of her own rather than as her husband's dependent. The Court stated that when people marry, they acquire a matrimonial domicile, and that domicile is the place where the parties live together as husband and wife, with the intention of making that their fixed and permanent home. The concept of "residence" satisfied "domicile" as used in DRL 231. Actually "domicile," under 231 is being construed to mean "residence," under common law construction. This the fact that a person is an alien does not bar him or her, as a matter of law, from acquiring a domicile in New York State for the purpose of maintaining an action for divorce.

There are many matrimonial situations in which New York Courts have extended jurisdiction to aliens. Certain factual patterns frequently occur in which lawyers with an awareness that aliens can have access to New York Courts can render legal services. This writer has handled several such situations in Erie County where the Court has extended jurisdiction to aliens.

Another common problem frequently facing divorced aliens, and who marry in the United States, is that the Immigration Service may not recognize that person's prior divorce. In those situations, the lawyer can institute a new divorce action in the State of New York, thereby curing the alleged defect. Also, in situations where both spouses are in the United States as aliens and matrimonial difficulties arise, New York is the proper forum for a divorce action if the jurisdictional statutory requirements are met.

To conclude, aliens do have access to this state's courts, since alien status does not necessarily impute a lack of sufficient ties to confer jurisdiction. These aliens can have their matrimonial needs entertained without the need to travel to their former homelands. The term "residence" under the Domestic Relations Law has a more expanded meaning than it had in the past, and should not be overlooked when dealing with aliens such as students, temporary workers or even illegal aliens.