

LESTER DOMINIC SOLICITORS

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Dominic Pisano
Senior Partner & Head of Family Department

DIVORCE LAW

How can Filipinos divorce in England?

If you are a couple who married in the Philippines, it will not affect your ability to divorce in England & Wales. The crucial aspect is whether in the first place your marriage is recognised under English Law. For it to be recognised, both parties need to have had the capacity to marry under Filipino law and, secondly, the marriage ceremony itself needs to comply with Filipino law. Furthermore, it will not be a problem if your spouse is living in the Philippines. In this situation, you will still be able to divorce as long as you meet the requirements under domicile and habitual residency. Finally, you will need your original Marriage Certificate. If it is not in English, it will need to be translated by a qualified translator.

To divorce in England, you need to show you are either domiciled or habitually resident in

England and Wales. Let us try and make clear what these two phrases mean because it will help us answer the question 'Can I divorce under English Law?' Only after we have understood these two phrases will we be able to determine whether you meet the requirements stemming from them.

What does domicile mean in English Law?

Firstly, we must dispel the myth that it simply means 'where you live'. This is firmly untrue. It is better understood as the place you consider home. Your intention is key and can be shown by the ties you have with England – social, economic and cultural.

How exactly is your domicile determined?

When you are born, you automatically gain domicile "of origin" from one of your parents. That domicile is either your father's, if within marriage, or your mother's, if outside of marriage.

Can Filipinos change their domicile from the Philippines to England?

It is important to adopt England & Wales in every way for this to happen. Ultimately, England needs to be the place you consider home. If your domicile of origin is the Philippines but you have been living in England for many years, your domicile could still be the Philippines if you still consider it your home and intend to return one day to the Philippines. As mentioned above, your intention is vital and can often be the downfall for those wanting a divorce in England.

What does it mean to be habitually resident?

Habitual residence refers to your home in a place or country with the intention of being settled there. As long as you can show you are here for a stable permanent period, it will be enough to be described as settled.

The final stage

Having explained what the different terms mean, we can now answer the direct question 'Can I divorce under English law?' You will only be able to answer this question with a 'yes' if your situation mirrors at least one of the following:-

- You are habitually resident and have resided here for the last 12 months;
- You are domiciled and habitually resident here but also have resided here for at least 6 months;
- You and your spouse are habitually resident in England & Wales;
- You and your spouse were last jointly habitually resident in England & Wales;
- Your spouse is habitually resident in England & Wales;
- You and your spouse are domiciled here.

We can provide individual tailored advice. Should you wish to discuss your matter with a specialist Family law solicitor, please contact Mr Pisano on the number set out below.

IMMIGRATION LAW

How can Filipinos join their family members in the UK?

Under the UK Immigration Rules, Filipino nationals can apply to join their family members who live in the UK. If you are the husband, wife, same sex unmarried or civil partner of a British national or someone who has settled status, you can make an application at the British Embassy in Manila. Filipinos can also apply to join their children who are attending school and other relatives in the UK.

What are the rules?

There are four main requirements to meet if you are applying as a husband, wife, same sex unmarried or civil partner. Firstly, you will need to show that you have met one another, secondly that you intend to live together permanently in the UK and the third and fourth requirements are that there is enough money to fund your stay in the UK and accommodation without relying on state benefits.

The Entry Clearance Officer will want to see evidence of your relationship. It is important to get the presentation and key documents of your application right, otherwise you could have your application refused.

If you are already in the UK under another category, such as a student, you may have to return to the Philippines to apply for entry clearance. Extending your stay in the UK may not be possible.

What will happen when your Visa is granted?

If your application is successful, you will be given a two year UK Visa. During that time, you will be able to work or study. At the end of the two years, you may be able to apply for Indefinite Leave to Remain, which means that there will be no limit as to how long you can stay in the UK. To be successful you will have to show that you have lived with your husband, wife or partner during the two year Visa. If your relationship has broken down during this time, you will not be able to apply for Indefinite Leave to Remain on a marriage/partner Visa. However, if you have been a victim of domestic violence or your husband, wife or partner has died, you may be able to apply for Indefinite Leave to Remain before the end of the two year period.

Filipino nationals can also apply as a fiancé/fiancée if they want to get married in the UK but the Visa will be granted for six months only. You will be expected to marry during this time and another application must be made at the Home Office to obtain your two year Visa.

What if you have overstayed your Visa or breached Immigration Rules?

The UK government has recently changed the rules to ban people who have overstayed their Visa or have been in breach of the immigration rules, for example, by submitting a fraudulent document or who have been removed or deported from the UK. These bans range from one to ten years.

The introduction of the bans raises serious concerns about Human Rights and the right to family life in the UK. Fortunately, the UK government has decided not to apply for bans to people applying to join their family members in the UK. Therefore, Filipino nationals who apply to join their family members in the UK and have breached their Visa conditions, such as by becoming an overstayer, will not automatically have their applications refused or face a ban.

It is important to remember that although you may not face an automatic ban, your application can still be refused if you do not meet the rules. If you commit more serious offences, such as not meeting reporting conditions, the ban could still apply to you.

Applying to join your British or settled family member in the UK is therefore not straightforward. Making sure that your application is prepared well and that you have checked how your previous immigration status may affect your application will be essential steps that each Filipino national should take.

We can provide you with advice specific to your individual circumstances. Should you wish to discuss your matter with the Immigration Department, please contact Miss Husbands on the number set out below.



Rekha Husbands
Immigration Department

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Landlord and Tenant / Wills and Probate

85-87 Ballards Lane, Finchley Central, London, N3 1XT

Tel:+44(0)20 8371 7400 / Fax:+44(0)20 8346 7685 / Email: enquiries@lesterdominic.com

www.lesterdominic.com