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Vet. Aff. Op. Gen. Couns. Prec. 58-91

TEXT:

Meaning of "Legal Impediment" for Purposes of Deemed-Valid Marriage Under 38 U.S.C. § 103(a) -- Common-Law Marriage

QUESTION PRESENTED:

Does the requirement of a marriage ceremony by a jurisdiction which does not recognize common-law marriage constitute a legal impediment to a purported marriage for purposes of establishing a deemed-valid marriage under 38 U.S.C. § 103(a)?

COMMENTS:

1. This question arises in a case involving a claimant for dependency and indemnity compensation (DIC) who cohabited with a veteran as husband and wife in Puerto Rico for over four years prior to their ceremonial marriage, which occurred 9 days prior to the veteran's death on May 13, 1988. Common-law marriage is not recognized in Puerto Rico, and the claimant's ceremonial marriage did not meet the requirement of 38 U.S.C. § 404 for DIC that the surviving spouse have been married to the veteran for one year or more unless children were born of the marriage or the marriage occurred within 15 years of termination of the veteran's military service. At a hearing on April 2, 1990, the claimant testified to having been unaware that common-law marriage is not recognized under Puerto Rican law.

2. Section 103(a) of title 38, United States Code, provides in pertinent part:

Whenever, in the consideration of any claim filed by a person as the widow or widower of a veteran for gratuitous death benefits under laws administered by the Department of Veterans Affairs , it is established by evidence satisfactory to the Secretary that such person, without knowledge of any legal impediment, entered into a marriage with such veteran which, but for a legal impediment, would have been valid, and thereafter cohabited with the veteran for one year or more immediately before the veteran's death, ... the purported marriage shall be deemed to be a valid marriage

Section 103(a) was enacted in section 2(a) of Pub. L. No. 85-209, 71 Stat. 485 (1957), and was incorporated without change in title 38 as recodified by Pub. L. No. 85-857, 72 Stat. 1105, 1109 (1958). It has been the long-standing interpretation of this Department that lack of recognition of common-law

marriage by a jurisdiction does constitute a legal impediment within the meaning of section 103(a).

3. The basis for this interpretation was clearly stated in Administrator's Decision No. 979, issued on April 2, 1962. A.D. No. 979 dealt with the question of whether the lack of a civil ceremony, required for a valid marriage under French law (there had been a religious ceremony in France), constituted a legal impediment within the meaning of section 103(a). That decision held that:

The term "legal impediment" in 38 USC 103(a) must be construed as including not only (1) particular substantive conditions for validity which may exist in certain jurisdictions such as those respecting age, race, mental capacity, marital status, and consanguinity, but also, with respect to one of the commonly accepted forms for creating a marriage (i.e., civil, religious, common-law, and tribal), (2) the special formalities, or external conduct required of the parties or of third persons, such as public officers, for the formation of a valid marriage by the laws of a particular jurisdiction.

The Administrator concluded that the French requirement of a civil ceremony fell within the meaning of the term "legal impediment" as so interpreted. This decision was soon followed by a series of unpublished opinions by this office which concluded that non-recognition of common-law marriage in a jurisdiction constitutes a legal impediment for purposes of section 103(a). See Digested Opinions, 10-1-62 (Veteran), 9-17-63 (Veteran), and 10-16-63 (Veteran) ("the lack of recognition by a state of a common-law relationship as creating a valid marriage is a 'legal impediment' within the meaning of that term as used in 38 USC 103(a)" (emphasis in originals)); see also Digested Opinion, 1-31-74 (Veteran) ("It is well established that a particular jurisdiction's non-recognition of a common-law marriage may constitute a 'legal impediment' within the meaning of 38 U.S.C. 103(a).").

4. While A.D. No. 979 is no longer considered to be a binding opinion under 38 C.F.R. §§ 3.101 and 19.103, as amended, see 54 Fed. Reg. 5610, 5611 (1989), it and the subsequent opinions of this office nonetheless reflect the Department's long-standing, largely contemporaneous construction of section 103(a), a statute which VA had helped develop. "Interpretations ... by those charged with the duty of administering and enforcing a statute have great weight in determining the operation of a statute" and special weight may be accorded where, as here, agency officials participated in the legislative drafting process. 2A N. Singer, Sutherland Statutory Construction § 49.05 (4th ed. 1984).

5. The decision in A.D. No. 979 was based in part upon an examination of the legislative history of Pub. L. No. 85-209. As noted in A.D. No. 979, the purpose of that statute, as stated in its preamble, was to "liberalize certain criteria for determining eligibility of widows for benefits." A.D. No. 979, at p. 1, described the objective of the statute as being to "alleviate hardship and avoid harsh results in

death benefit cases, by requiring recognition of certain asserted marriages to veterans notwithstanding defects which invalidate them."

6. A.D. No. 979 relied heavily on and quoted extensively from 42 Op. Att'y Gen. 37 (1961). That Attorney General's opinion had approved the holding of an opinion of the VA General Counsel, subsequently issued as Administrator's Decision No. 976 (1961), which had concluded that the term "legal impediment" in section 103(a) encompasses more than merely cases of prior, undissolved marriage. That opinion involved the purported common-law marriage between a claimant for gratuitous veterans' death benefits and a veteran who was the claimant's first cousin. The couple had lived as husband and wife for thirty years prior to the veteran's death and had had seven children together. The opinion addressed the issue of whether consanguinity (closeness of blood relationship), which barred the marriage under State law, constituted an impediment to the marriage within the meaning of section 103(a). The Attorney General concluded that "the phrase in the statute 'without knowledge of any legal impediment' is not restricted to lack of knowledge of the factual circumstances which caused the impediment to a valid marriage. Lack of knowledge of a law prohibiting particular marriages is apparently within the scope of section 103(a)." 42 Op. Att'y Gen. at 40.

7. The Attorney General explained that the language of section 103(a) is not limited to any particular legal impediment to marriage and that that language is broad enough to cover the situation there presented. Noting the liberalizing objectives of Pub. L. No. 85-209, the Attorney General concluded that the legislative history of the provision does not suggest a narrower reading. The Attorney General noted that, while the hardship examples provided to Congress by VA in support of the deemed-valid marriage legislation all involved prior, valid and undissolved marriages, see H.R. Rep. No. 284, 85th Cong., 1st Sess. (1957); S. Rep. No. 849, 85th Cong., 1st Sess. (1957), Congress' adoption of section 103(a)'s unrestricted language demonstrates its desire to alleviate other, similar types of hardships as well. The Attorney General found that nowhere in section 103 is there language which supports a narrower reading of the term "legal impediment." The Attorney General further reasoned that, as a widow "could hardly be without factual knowledge of her own prior marriage," the lack of knowledge requirement must have a broader meaning, encompassing lack of knowledge of the law prohibiting the marriage, not just "knowledge of the factual ground which activated the law." 42 Op. Att'y Gen. at 38-40.

8. A.D. No. 979, at p. 2, summarized the reasoning of the Attorney General's opinion as follows:

that 38 USC 103(a) is not limited in terms to a particular legal impediment, that the legislative history of the provision does not suggest a restrictive interpretation, that there was a liberalizing purpose to alleviate hardships in marital determinations, that if Congress had intended a narrow meaning respecting

the term "legal impediment", it could easily have so provided by appropriate language, and that a literal reading of section 103(a), dealing with invalid marriages, is not inconsistent with the provisions of section 103(c), respecting determinations as to valid marriages.

The reasoning of the Attorney General's opinion, as relied upon in A.D. No. 979, is, in our view, convincing. Further, we note that the terms of section 103(a) have only been amended twice since their enactment. See Pub. L. No. 90- 77, § 101(b), 81 Stat. 178 (1967) (reducing the required cohabitation period from five years to one, or any period of time if a child has been born of or prior to the purported marriage); Pub. L. No. 99-576, s 701(2)(A), 100 Stat. 3248, 3290 (1986) (making the provision gender neutral). These amendments have served to reinforce the liberal construction Congress intended that this section be given. Accordingly, we see no reason to depart from the conclusions reached in A.D. No. 979 and 42 Op. Att'y Gen. 37.

9. Applying the conclusions of these opinions in the instant case, it is plain that the requirement of a ceremonial marriage by a jurisdiction such as Puerto Rico constitutes a legal impediment to a purported marriage under section 103(a) for purposes of gratuitous veterans' death benefits. As with a prior undissolved marriage, consanguinity which renders a purported marriage invalid under state law, or the requirement of a civil ceremony by the relevant jurisdiction, the lack of a ceremonial marriage in a jurisdiction which requires such for a valid marriage is a legal impediment which, if unknown to the claimant, can create the type of hardship section 103(a) was intended to alleviate. For the reasons outlined above, we consider the terms of section 103(a) broad enough to encompass such a situation.

10. In the course of considering this claim, the Compensation & Pension (C&P) Service raised the issue of whether there was, in this case, a marriage to which an impediment could arise. Obviously, in no case where section 103(a) is applied will there already exist a valid marriage, or the application of section 103(a) would not be needed. See Op. G.C. 6-59 (3-10- 59) ("The word 'marriage' as here 38 U.S.C. § 103(a) used does not refer to a valid marriage. If it did, Pub. L. No. 85-209 would serve no useful purpose."); accord, Digested Opinion, 3-10-59 (Veteran). If the C&P Service was referring to the absence of a ceremonial marriage, such a marriage is clearly not a requirement for application of section 103(a) as that statute has long been interpreted by this Department. For example, the holding in A.D. No. 979 specifically referenced common-law marriage requirements and clearly contemplated application of section 103(a) to such marriages. The above- referenced Attorney General's opinion and A.D. No. 976 involved a purported common-law marriage, as did Op. G.C. 6-59 and Digested Opinions, 3-10-59 (Veteran) and 10-10-58 (Veteran). Moreover, the legislative history of this provision shows that reference to ceremonial marriage was deleted from legislative proposals on this subject based on VA's statement that the theory behind the legislation is equally applicable to "other

than ceremonial marriages." See Letter to Chairman, House Committee on Veterans' Affairs, from John S. Patterson, Acting Administrator of Veterans Affairs, on H.R. 6889, 84th Cong., 1st Sess. 1 (Dec. 14, 1955).

11. We leave for consideration by adjudication personnel the factual issue of whether the claimant was without knowledge of the legal impediment.

HELD:

Section 103(a) of title 38, United States Code, provides in part that, where it is established that a claimant for gratuitous veterans' death benefits entered into a marriage with a veteran without knowledge of the existence of a legal impediment to that marriage, and thereafter cohabited with the veteran for one year or more immediately preceding the veteran's death, such marriage will be deemed to be valid. The requirement of a marriage ceremony by a jurisdiction which does not recognize common-law marriage constitutes a "legal impediment" to such a marriage for purposes of that section.

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