

ACC

10000/142/53
(VOL. 2)

MARRIAGE
POLICY
JUN. 1945

10000/142/53
(VOL. 2)

MARRIAGE IN ITALY BY MEMBERS OF ALLIED FORCES,
POLICY
JUN. 1945 - JAN. 1947

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISION

1079
LJG/RS

31 January 1947.

AG/4007/L

SUBJECT : Marriages between US and UK
nationals.

TO : AFHQ : G-5.

1. Reference our AG/4007/L of 24 Jan. '47.

2. With reference to paras 2 and 3 of our letter of 24th Jan. regarding marriages celebrated in Italy by a British Chaplain between US and UK nationals who are members of their respective Armed Forces the following considerations must be borne in mind:

- a. Laws regarding marriages in the US are matters primarily of State rather than national concern.
- b. The laws of marriage in all States are statutory.
- c. Validity of marriages is governed by the laws of 48 different jurisdictions.
- d. As a general principle marriage laws whenever possible are construed by the Courts of all States to uphold the validity of a marriage.

3. In view of these circumstances I am of the opinion that such marriages, being valid according to British law, would be accepted as valid by the Courts generally in the USA.

D.J. GILBRIDE,
Major, IGO,
Chief Counsel,
for Chief Legal Advisor.

HEADQUARTERS ARMED COMMISSION

APO 794

LEGAL DIVISION

AC/4007/

HT/ms.

24 January 1947.

SUBJECT: Marriages between US and UK nationals.

TO : AFHQ : G-5.

1. Reference your G-5 : 931.11 of
30th Nov. '46.

2. A marriage celebrated in Italy by a British Chaplain between US and UK nationals who are members of their respective Armed Forces is governed by the terms of the Foreign Marriages Act, 1892, Section 22, which runs as follows :

"It is hereby declared that all marriages solemnized within the British lines by any Chaplain or other officer or person officiating under the orders of the commanding officer of a British Army serving abroad, shall be as valid in law as if the same had been solemnized within the United Kingdom with a due observance of all forms required by law."

3. The principle referred to in para 1(a) of your letter would apply to such marriages in the sense that they are rendered valid by a special statutory provision covering marriages performed by a chaplain of a British army serving abroad, but not in the sense that they are valid because valid in accordance with Italian law, seeing that such marriages

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106A

30th Nov. '46.

2. A marriage celebrated in Italy by a British Chaplain between US and UK nationals who are members of their respective Armed Forces is governed by the terms of the Foreign Marriages Act, 1892, Section 22, which runs as follows :

"It is hereby declared that all marriages solemnized within the British lines by any Chaplain or other officer or person officiating under the orders of the commanding officer of a British Army serving abroad, shall be as valid in law as if the same had been solemnized within the United Kingdom with a due observance of all forms required by law."

3. The principle referred to in para 1(a) of your letter would apply to such marriages in the sense that they are rendered valid by a special statutory provision covering marriages performed by a chaplain of a British army serving abroad, but not in the sense that they are valid because valid in accordance with Italian law, seeing that such marriages are not solemnized under Italian law. Since US accepts the principle in question this Division is of opinion that such marriages would be valid as regards Americans.

4. As regards your para 1 (b) Italian law would recognise such marriages as valid upon the principle that an occupying army is not subject to the laws of the country occupied, but are governed by their own law : "a British army is deemed to carry with it British law."

5. It may be pointed out that, if the persons under consideration wish to abandon their rights of extraterritoriality, they can be validly married under the law of the land, i.e., Italian law;

but, if they take advantage of their extraterritorial rights and get married under British or American law, as neither of them is an Italian citizen, nor resident in Italy, Italian law does not enter into the question any more than any other foreign law.

MICHAEL THOMAS,
Italian Branch,
for Chief Legal Advisor.

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4007 ✓

388.7

Legal 105

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

G-5: 931.11

30 November 1946

SUBJECT: Marriages between
US and UK Nationals.

TO : Chief Commissioner,
Allied Commission,
APO 794.

1. Will you please consider, in consultation with the British Embassy unless you consider that unnecessary, whether a US-British marriage celebrated in Italy by a British Chaplain, is ~~not~~ valid because: (+)

- a. The US recognises as valid a marriage which is valid according to the law of the place in which it is contracted.
- b. Italian law recognises as valid a marriage validated by the British Foreign Marriages Act of 1892.
- c. The Foreign Marriages Act of 1892 recognises as valid a marriage British subjects celebrated overseas by a British Chaplain.

BY COMMAND OF LIEUTENANT GENERAL LEE:

A. L. Hamblen

A. L. HAMBLEN
Colonel, G.S.C.
Assistant Chief of Staff, G-5

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LEGAL SUB - COMMISSION	
GJO - CLA	
DSLO	
CHIEF COUNSEL	
LEGAL SECTION	
REC'D	DEC 3 1946

(+) Note.

Col. White telephoned asking that a correction be made by striking out the word "not" in line 3.

Hamblen 3/XII

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISION

FILE
104A

AC/4007/L

MT/ns
8 January 1947.

SUBJECT : Marriages between Allied Nationals.

TO : G-5 : AFHQ.

1. Reference your G-5 : 931.11 of
20th Decr. 1946.

2. As to the answers to the questions
raised in your letter of 30th November depend not
only upon the interpretation of the Foreign Marriages
Act, 1892, but possibly upon Treaties and Foreign
Office instructions, it has been necessary to consult
His Britannic Majesty's Consul in Rome. On receiving
from him the requisite information, which is expected
shortly, a reply will be made by this Division on the
questions raised.

For the Chief Commissioner:

MUSGRAVE THOMAS,
Italian Branch,
for Chief Legal Advisor.

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Legal 103A

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

G-5: 931.11

20 December 1946

SUBJECT: Marriages between Allied Nationals.

TO : Chief Commissioner,
Allied Commission,
APO 794.

May the reply to this Headquarters letter G-5: 931.11
of 30 November be expedited please.

BY COMMAND OF GENERAL MORGAN:

W. J. Brown
dt. Col. Ent.

For A. L. HANLEY
Colonel, G.S.C.
Assistant Chief of Staff, G-5.

LEGAL SUB - COMMISS	
CJO - CLA	
OCLO	
CHIEF COUNSEL	
ITALIAN SECTION	
Recd	27 DEC 1946

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HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISIONFILE
102

MT/RS

8 January 1947.

AC/4007/L

SUBJECT : Consular Marriages.
TO : H.B.M. Consul
ROME.

1. With reference to a telephone conversation between the writer and Mr. Neville Terry on the subject of Consular marriages this Division would greatly appreciate having the views of the H.B.M. Consul on the following point.

2. Upon the signature of the Treaty of Peace and the resumption of normal diplomatic relations between Great Britain and Italy what will be the position of (a) two British subjects, and (b) a British subject and a non-British subject applying to be married at the Consulate?

3. If the Consulate would be ready to celebrate the marriage in case (a) or (b), would you please state the authority upon which the marriages would be performed.

4. If, similarly, the Consulate would not be willing to celebrate a marriage in case (b), that is a marriage between a British and a non-British subject, this Division would like to be informed of the authority upon which the Consulate would refuse to entertain such an application.

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MUSGRAVE THOMAS,
Italian Branch,
for Chief Legal Advisor.

STUDIO VASSALLI
10 LUNGOTEVERE VALLATI, ROMA

101A

PROF. FILIPPO VASSALLI
PROF. GIUSEPPE FERRI
PROF. GIULIANO VASSALLI
PROF. PASQUALE CHIOMENTI

TEL. 33521

Rome 22nd January 1947.

Judge Busgrave Thomas,
Legal Sub-Commission,
Allied Commission,
Via Veneto,
Rome.

Dear Judge Thomas,

I have considered the question of the validity of a marriage solemnized in Italy by the British Ambassador or the British Consul.

In my opinion such a marriage is valid if it is made in accordance with the provisions of the Foreign Marriages Act 1882 (55-56 vict. c. 23).

The general principle of Private International Law, that a marriage is recognized valid if it is valid according to the Law of the place in which it is contracted, is out of question in this particular case, since here the marriage is not solemnized under the laws of Italy but it is solemnized under a special statutory provision, which empowers the Ambassador or the Consul to solemnize marriages.

From the British point of view there can be no question about the validity of such marriage.

If we consider the matter from the Italian point of view, I think that the marriage would still be recognized valid, at least in so far as the British party to the marriage is concerned.

Article 17 of the "Disposizioni sulla legge in generale" provides that the status and the capacity of a person are regulated by his National Law: therefore if a British subject can, under British Law, validly be married by the British Ambassador or the British Consul,

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No. 785016

16.1° NORTH VERDE VALLEY, ARIZONA

PROF. FILIPPO VASSALLI
PROF. GIUSEPPE FERRI
PROF. GIULIANO VASSALLI
PROF. PASQUALE CHIOMENT

TEL 55521

the marriage is held valid by Italian law. It is true, here the question is that of the form of an act and not the capacity to perform it; but I think that the principle contained in art. 17 above-mentioned goes beyond the *littera legis*.

However, if one party to the marriage is Italian, the marriage would not be valid so far as the Italian subject is concerned.

Under Italian Law an Italian subject can only perform in Italy such marriages as are contemplated by the Civil Code and the special laws of 1929 concerning marriages solemnized by Catholic priests and by ministers of other "admitted" cults.

Yours ever
Pasquale Triunfanti

British Embassy,
Consular Section,
Rome.

30-1M

14th January, 1947

Sir,

With reference to your AO/4007/L of 8th
January 1947, Consular marriages.

2. I would point out that Consular Officers
in Italy are not permitted to solemnize marriages,
and use their warrants for the purpose of issuing
"Certificates of No Impediment".

3. "Notices of Marriage" are, of course, accepted
by this Consular Section and no distinction is made
between Anglo-Italian or marriages between British
Subjects. This and my paragraph 2 above covers
the point raised in your paragraph 4.

4. I enclose for your information the notes which
we normally send to those who desire to marry in
Italy.

I am, Sir,
Your obedient servant,

H. M. CONSOLE.

Musgrave Thomas, Esq.,
Legal Division,
Headquarters Allied Commission,
APO 794.

100H

MARRIAGES IN ITALY IN ACCORDANCE WITH
ITALIAN LAW

NOTES FOR GENERAL GUIDANCE ON PROCEDURE FOR OBTAINING CONSULAR
CERTIFICATES OF "NO IMPEDIMENT".

1. Both the Italian marriage authorities and the British consular authorities should be approached at the earliest possible time. First steps can be taken at a British Consulate as early as three months before the date set for the marriage.
2. In order to acquire validity in Italian law, a marriage must be registered with the Italian civil authorities. If the ceremony is to be a religious one only, it should be made clear at the outset that it is to be registered with the civil authorities, whose requirements in each case should be ascertained by the parties.
3. A religious marriage cannot be recognized by a British consular officer until it is registered by the Italian civil authorities. For instance, the wife cannot, without showing evidence of such registration, claim a British travel document.
4. Under Italian law, a foreigner wishing to marry must produce a certificate of "No Impediment" (Nulla Osta), issued by his Consul. Application for this certificate may be made (by post if personal attendance is impossible) as early as three months before the marriage is to take place (see paragraph 12 below).
5. As a general rule applications can only be dealt with by the Consuls of the districts in which the parties are residing; information may however be obtained by personal enquiry at any convenient Consulate. Consular districts are at present as follows:-

H.B.M. Consul General Naples (Superintending Officer for
Campania, Puglia, Lucania,
Calabria and Sicily).

with Consulates at Pari
(immediate Pari district)

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3. A religious marriage cannot be recognized by a British consular officer until it is registered by the Italian civil authorities. For instance, the wife cannot, without showing evidence of such registration, claim a British travel document.
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5. As a general rule applications can only be dealt with by the Consuls of the districts in which the parties are residing; information may however be obtained by personal enquiry at any convenient Consulate. Consular districts are at present as follows:-

H.B.M. Consul General, <u>Naples</u>	(Superintending Officer for Campania, <u>Puglia</u> , <u>Lucania</u> , Calabria and <u>Sicily</u>).
	with Consulates at <u>Bari</u> (immediate Bari district) and <u>Palermo</u> (Sicily)
H.B.M. Consul-General, <u>Milan</u>	(For Lombardy, <u>Emilia</u> , <u>Piedmont</u> and the 3 Venetias, viz: <u>Trieste</u> Venice and <u>Bolzano</u> regions).
H.B.M. Consul, <u>Turin</u>	(For <u>Piedmont</u>)
H.B.M. Consul-General, <u>Genoa</u>	(for <u>Liguria</u>)
H.B.M. Consul, <u>Rome</u>	(for <u>Lazio</u> , <u>Abruzzi</u> and <u>Sardinia</u>)
H.B.M. Consul, <u>Florence</u>	(for <u>Tuscany</u> , <u>Marche</u> and <u>Umbria</u>)
	6. If....

- 2 -

6. If both parties reside in the same consular district, one party only (who must be British) need apply. If resident in different districts, each party must apply separately to the Consul of the district in which he, or she, is resident.
7. The application is made for the purpose of posting a notice of marriage at the Consulate, with a view to obtaining, in due course, a certificate of "No Impediment".
8. If both parties are British, notice of marriage may be posted after seven full days' residence in the district of the Consulate accepting it. It then remains posted for fourteen full days, after which the certificate of "No Impediment" may be issued. Twenty-one full days in all.
9. If one party is British, but the other is a foreigner, the residential qualification is twenty-one full days in either case, with a further twenty-one days' posting. Forty-two days in all before a certificate can be issued.
10. The written consent of the parents or guardians must be produced in the case of a party to a marriage who is under twenty-one years of age.
11. The following, where appropriate, should be submitted when making application:-
 - (a) Evidence of British nationality (birth certificate, passport or certificate from Commanding Officer that, according to records applicant is a British subject).
 - (b) Permission to marry given by Commanding Officer.
 - (c) Full names, nationality, dates of birth and addresses of both parties. The address should include names of localities and province; length of residence in the district should also be stated.
 - (d) If personal attendance is impossible, valid reasons should be given so that acceptance of notice by post may be considered. This is only done exceptionally and involves obtaining authority from the Foreign Office in

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 - (b) Permission to marry given by Commanding Officer.
 - (c) Full names, nationality, dates of birth and addresses of both parties. The address should include names of localities and province; length of residence in the district should also be stated.
 - (d) If personal attendance is impossible, valid reasons should be given so that acceptance of notice by post may be considered. This is only done exceptionally and involves obtaining authority from the Foreign Office in each case.
12. If you have not already supplied particulars in 11 above, you should do so on receipt of these notes and ask the other party to your marriage, if not resident in the same Consular district, to send to the Consul of that district any of the information under (a), (b) and (d) that may be applicable, in addition to that under (c).

Mr. Mallet.

For perusal and return to Consular Section.

20.1.47



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Copy for Mr. Mallet

NOTES ON MARRIAGES AT THE EMBASSY.

The Foreign Marriages Act 1892 provides that "Any marriage warrant of a Secretary of State may authorize to be a marriage officer:-

- (a) A British Ambassador residing in a foreign country to the Government of which he is accredited, and also any officer prescribed as an officer for solemnizing marriages in the official house of such Ambassador".
(but see below: warrant is not necessary).

Art. 3 of the Foreign Marriages Order in Council, 1913, states that

"the house in which a British Ambassador resides in the foreign country to the Government to which he is accredited, or which is occupied by him in that country for the purposes of his Embassy, shall be deemed to be the official house of such Ambassador, and is in these Regulations referred to as the Embassy house, and every place within the precincts or curtilage of any such house, and any church or chapel annexed to such house, or for the time being used with the consent of the Government to which the Ambassador is accredited as the chapel thereof, shall be deemed to form part of the Embassy house. For the purpose of marriage in an Embassy house, the expression "office", when used with respect to the place where any act or thing shall or may be done, shall be construed to refer to such part of the Embassy house as the Ambassador may from time to time appoint as being sufficiently accessible to the public."

Art. 4 adds that ...

"The person before and by whom a marriage under the Foreign Marriage Act may be solemnized and registered in an Embassy house in a foreign country shall either be the Ambassador or any member of the diplomatic service not below the rank of Secretary, who is attached to the Embassy, and who is from time to time appointed for the purpose in writing by the Ambassador; and for the purpose of marriages solemnized in such Embassy house, such Ambassador or member of the diplomatic service shall without any marriage warrant, be a marriage officer."

From the above, it would seem that the Ambassador

"Embassy house, and every place within the precincts or curtilage
 "of any such house, and any church or chapel annexed to such
 "house, or for the time being used with the consent of the
 "Government to which the Ambassador is accredited as the chapel
 "thereof, shall be deemed to form part of the Embassy house.
 "For the purpose of marriage in an Embassy house, the expression
 "'office', when used with respect to the place where any act
 "or thing shall or may be done, shall be construed to refer to
 "such part of the Embassy house as the Ambassador may from
 "time to time appoint as being sufficiently accessible to the
 "public."

Art. 4 adds that ...

"The person before and by whom a marriage under the Foreign
 "Marriage Act may be solemnized and registered in an Embassy
 "house in a foreign country shall either be the Ambassador or
 "any member of the diplomatic service not below the rank of
 "Secretary, who is attached to the Embassy, and who is from
 "time to time appointed for the purpose in writing by the
 "Ambassador; and for the purpose of marriages solemnized in
 "such Embassy house, such Ambassador or member of the diplomatic
 "service shall without any marriage warrant, be a marriage
 "officer."

From the above, it would seem that the Ambassador
 need not hold a marriage warrant, and that it is possible for
 H.E. to appoint a member of the diplomatic service not below
 the rank of secretary to solemnize any given marriage in the
 Embassy.

It might perhaps be held that an Ambassador needs
 to be accredited to the Government of the country before the pro-
 visions quoted above can apply, but that may be regarded as
 a mere quibble.

The Head of the Consular Section holds a marriage
 warrant as Consul, but Consular Officers in Italy are not per-
 mitted to solemnize marriages and their warrants are used for
 the purpose of issuing certificates of no impediment required
 by Italian marriage officers under the provisions of the Italian
 civil code. The Head of the Consular Section could presumably
 not use that warrant for solemnizing a marriage at the Embassy.

It is

- 2.-

It is also doubtful whether, under the present wording of the Order in Council, he could be appointed by the Ambassador for that purpose, his rank of First Secretary being a local one.

In my opinion, both the Ambassador's actual residence and the Embassy building may be deemed to be the "Ambassador's house".

The question has sometimes arisen whether the Embassy could be used for the purpose of a marriage to be solemnized by someone holding authority to perform certain marriages (e.g. marriages in the lines). In such cases, it is, I think, entirely a matter for the marriage officer to decide whether the marriage may be performed at the Embassy, which is extra-territorial.

The grant of any such privilege would have nothing to do with the Ambassador's authority to solemnize marriages under the Foreign Marriage Act. Neither the fact of the marriage taking place at the Embassy, nor that of the Ambassador being present, would in any way affect the validity of the marriage.

CONSULAR SECTION.

23rd August, 1946.

The Foreign Marriage Act, 1892 (55 & 56 Vict. c. 23)

9PA

1. Valid of marriages solemnized abroad in manner provided by Act.
All marriages between parties of whom ^{whom} one at least is a British
subject solemnized in the manner in this Act provided in any
foreign country, or place by or before a marriage officer within
the meaning of this Act shall be as valid in law as if the
same had been solemnized in the United Kingdom with the
observance of all forms required by law.

2. In every case of a marriage intended to be solemnized under
this Act, one of the parties intending marriage shall appear at office,
stating his name, surname, profession, condition, and residence of
each of the parties, and whether each of the parties is or is not
a married person, and give to the marriage officer, when whose
docket both of the parties have had their residence not less than
one week then past preceding, & the officer shall state that
they have so resided.

3. The marriage officer shall file every such return, and keep it
with the archives of his office, & shall also ^{sign} a copy of the return for
forthwith enter on a book of notices to be kept by him for the
purpose, and put up in some conspicuous place in his
office, a true copy of every such notice, and shall keep the
same so posted up during further consecutive days after
the date of solemnization as he may think fit.

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(1) Book open to inspection

4 (1) The like consent shall be required to a marriage within this Act as is required by law to marriage solemnized in England

Interim
Consent

(2) Every person whose consent to a marriage is required by law at any time before the solemnization of the marriage is required to sign the word "freely" under the Act, provided that by marriage solemnized in England, the consent of the intended parties to the marriage is required, and by solemnizing the marriage, the intended parties shall be void, and if a marriage is solemnized in England, the intended parties shall be void, and if a marriage is solemnized in England, the intended parties shall be void.

5. Consent against marriage may be lodged with magistrates if it is referred to marriage - may appeal to Mag. 3.

6. Have not yet within 3 months need notice required

7. Both before marriage

(a) That there is not any impediment

(b) Consent - (after party tender 21)

8. Person may be solemnized if no impediment

9. To marriage in an Embassy or a foreign country, the Foreign Marriage Act, 1943 (S.R. 40, 1943, p. 1270 p. 382) s. 5 to 5

have before Consul or Officer Act 6

9. Marriage fees

EXECUTIVE OFFICER:
RAYMOND B. BRAGG

SCIENTIFIC CO-DIRECTORS
ELMER L. SEVRINGHAUS, M.D.
MAURICE B. VISSCHER, M.D.

THE ITALIAN MEDICAL NUTRITION MISSION
OF THE
UNITARIAN SERVICE COMMITTEE
25 BEACON STREET, BOSTON 8, MASSACHUSETTS
AND
CONGREGATIONAL-CHRISTIAN SERVICE COMMITTEE
289 4TH AVENUE, NEW YORK 10, N. Y.
COOPERATING WITH
UNITED NATIONS RELIEF AND REHABILITATION ADMINISTRATION

ADDRESS REPLY TO:

Halsbury Vol. 6 p. 290 et seq.

The Foreign Marriage Act 1892 (55 & 56 Vict. c. 24)

" Order in Council, 1913 (101270) and 1925 (101272)

[Stat. Order 1913 No. 1270

1925 No. 72

The Order of 1913, as amended by Order of 1925, introduces modifications of the requirements as to residence & notice when both parties have not dwelt within the district of the marriage.

" All marriages solemnized within the British Isles by a Chaplain, or officer, or other person officiating under the orders of the Commanding Officer of 53 British Army serving abroad, have equal validity with marriages solemnized within the Kingdom.

The whole question is dealt with in Halsbury (Marriage Edition) Vol. 6 p. 290 et seq.

General scheme of the Act is to provide that all marriages celebrated abroad between parties one of whom is British subject shall be treated as marriages in manner provided by the Act shall be as valid as if duly solemnized in the U.K. according to law.

(Bristol v. Brown, 5 Q.B. 132)
(*Foreign & Commonwealth Law*)

"A foreign Court will not necessarily recognize a marriage of this kind on the ground of extrajurisdiction, unless both parties to it are British subjects; but a declaration by a foreign Court that such a marriage is valid through non-compliance with the forms of the local law is celebratory and not prevent an English Court from holding it valid in England if celebrated according to the Statute."

Foreign marriages solemnized abroad are valid.

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If the woman is a British subject & the man an alien, the marriage officer must be satisfied that the marriage will be valid by the law of the husband's country.

A British citizen is presumed to carry with it British Law."

Statutes, Vol. 15 p. 712

Master, who has / of whom we at least
is a Pres. duly / of whom we at least
know in this Act in any foreign
country or place by or before a military
officer who may or who shall be an
order as of before in any with due observance
of all forms required by law

1. Issue of a headed order
2. Delivery of a portion of a notice
3. Current required in any report for war, under Act.
7. Both are independent

18. Registration of arrival of marriage
made in accord with local laws

22. It is hereby declared that a
military / of whom we at least
know by any chaplain or other officer or
person officiating under the orders of the
commanding officer of a ship having
sailing abroad, shall be as valid
as laws of the same kind in
any other country within the limits, with a view

The Foreign Marriage Act, 1892
 Part C 23

(a) The British or Consul has power to license marriages only if one of the parties is a Brit. subject. The Act does not require both parties to be Brit. nationals.

It is held by British courts that a man who is domiciled in the foreign of a Brit. subject the Brit. subject would be "incapable of contracting marriage with international law of the country of domicile."

(b) Marriage is void if it is solemnized

(c) A person within the limits of a Brit. Army may be solemnized "by any Chaplain, or other person officiating under the orders of the commanding officer of a Brit. Army, wherever located." (S. 22) The effect of this is required. The Act applies not only to marriages of Brit. subjects but also to marriages between aliens.

The form of mass is governed by the laws
of the place at which one is employed.
Persons report on forms. This is one of the
most fundamental rules of the military.
one not free from ambiguity?

Reg. & Army laws take the principle
of Korean report as a basis for uniformity
to every one. It was decided when
concluded in 1944. Disagreement?

a. Law of land has not given - very much
 of the U.S. of the power on ground of their own
 power, and therefore to not have to make use of
 the local procedure for marriage.

b. That law has not been into the business
 state law could not be held - law is not
 carried out under the law.

c. Marriage by church - applied to the law
 and should be noted as a separate consideration
 in view of the principle involved in the law of the
 marriage, and the law of the state.

d. Marriage by state - not a separate consideration

HEADQUARTERS ALLIED COMMISSION
AFHQ 794
LEGAL DIVISION

97A

NY/IT.
22 October 1946.

AG/1007/L.

SUBJECT : Marriages between Allied Nationals.

TO : AFHQ : C-5.

1. Reference your C-5: 931.11 of 2nd September and 7th October 1946.

2. Professor CHIOLETTI, the Italian Counsel referred to in our letter of 13th September, has just returned from London and it was possible only yesterday evening to have a conference with him. He expressed his views in a letter written to this Division prior to going to London, but which was mislaid ^{in his office} and which I saw only yesterday.

3. With regard to the question raised in your letter of 8th August Prof. CHIOLETTI's views are as follows:

"1. With reference to the letter from AFHQ, C-5 Section, C-5: 931.11, dated 8 August 1946, I wish to submit that, in my opinion, it is neither convenient nor possible to request the Italian Government to issue a statute such as that suggested by AFHQ in order to 'regularize' Anglo-American marriages celebrated by a chaplain or other authorized person of the British Forces in accordance with the British Foreign Marriages Act 1892.

(a) I think that one can hold that such marriages are valid under Italian Law on the legitimate assumption that Italian Law recognize the principle of international law according to which the members of an expeditionary corps are not subject to the laws of the country where the latter is stationed, but carry with them their own 'personal status'.
If this is correct - and my colleagues, with whom I have discussed the question share my opinion - it would not be safe to pass any legislation, which might have the effect of questioning the validity of the a.s. principle,

50

- 2 -

with deleterious consequences over the marriages celebrated prior to the enactment of the proposed legislation.

- (5) Even if one recognized the necessity of passing a new law this could never be retroactive, nor could the legislator waive the requirement that both the spouses themselves register the marriage. In other words the legislator could not prescribe an ex officio registration, since that would amount to rendering the law retrospective."

4. In reply to the points raised in your letter of 31st July Prof. CRISTINI submits the following opinion:

"2. With reference to AFHQ's letter dated 31 July 1946, I wish to point out that it is not possible to follow AFHQ's suggestion as to having the registration of marriages prior to D.L.L. 430 effected by an Officer of Field Rank having the custody of Records.

This registration ex officio to be made without the interested parties knowing it - would amount, I say, to rendering the decree retrospective; which would be against a long established policy in our legal system."

5. This Division would be glad to be informed whether you wish action taken in accordance with the opinions cited above with which it entirely agrees.

6. The delay in dealing with this matter is regretted, but it has been due to circumstances beyond our control.

For the Chief Commissioner :

MURRAY THOMAS, 49
Italian Branch,
for Chief Legal Advisor.

STUDIO VASSALLI

RCLUNGOTEVERE VALL'ATL. ROMA

PROF. FILIPPO VASSALLI
 PROF. GIUSEPPE FERRI
 PROF. GIULIANO VASSALLI
 PROF. PASQUALE CHIOMENTI

TEL. 55521
961A

7 September 1946

My dear Judge Thomas,

I am sorry I could not examine earlier than this the papers you sent me while I was at Santa Margherita Ligure, concerning marriages between Allied Nationals.

[1. - With reference to the letter from AFHQ, G-5 Section, G-5: 931.11, dated 8 August 1946, I wish to submit that, in my opinion, it is neither convenient nor possible to request the Italian Government to issue a statute such as that suggested by AFHQ in order to "regularize" Anglo-American marriages celebrated by a chaplain or other authorized person of the British Forces in accordance with the British Foreign Marriages Act 1892.

(a) I think that one can hold that such marriages are valid under Italian law on the legitimate assumption that Italian law recognize the principle of international law according to which the members of an expeditionary corps are not subject to the laws of the country where the latter is stationed, but carry with them their own "personal status".

If this is correct - and my colleagues, with whom I have discussed the question share my opinion - it would not be safe to pass any legislation, which might have the effect of questioning the validity of the a.m. principle, with deleterious consequences over the marriages celebrated prior to the enactment of the proposed legislation.

(b) Even if one recognized the necessity of passing a new law this could never be retroactive, nor could the legislator waive the requirement that both the spouses themselves register the marriage. In other words the legislator could not prescribe an ex officio registration, since that would amount to rendering the law retrospective.]

STUDIO VASSALLI

10 LUNGOTEVERE VALLATI, ROMA

PROF. FILIPPO VASSALLI
PROF. GIUSEPPE FERRI
PROF. GIULIANO VASSALLI
PROF. PASQUALE CHIOMENTI

TEL. 55521

[2.- With reference to AFHQ's letter dated 31 July 1946, I wish to point out that it is not possible to follow AFHQ's suggestion as to having the registration of marriages prior to D.L.L. 430 effected by an Officer of Field Rank having the custody of Records.

This registration ex officio to be made without the interested parties knowing it - would amount, I say, to rendering the decree retrospective: which would be against a long established policy in our legal system.]

If you want to try again with Azzariti, you may send him a letter, whose draft I am enclosing herewith.

With kindest regards,

I am,

Yours very truly
Pasquale Chiomenti

Enclosure

MINUTA DI LETTERA PER IL MINISTERO DELLA GIUSTIZIA

1:- Con riferimento a quanto ha formato oggetto di discussione con il Sig. Capo dell'Ufficio Legislativo di codesto Ministero, si comunica che il Quartiere Generale delle Forze Armate Alleate ci ha dato istruzioni di richiedere a codesto Ministero l'emanazione di un provvedimento legislativo inteso a:

(a) precisare che nell'espressione "stranieri residenti in territorio italiano" sono ricompresi "gli stranieri di nazionalità britannica soggetti o all'Atto di Disciplina Navale, o alla legge militare o all'Atto per la Forza Aerea oppure che siano membri del Regio Servizio Femminile Navale" (foreigners being British subjects either subject to the Naval Discipline Act, to Military Law or the Air Force Act or a member of the Woman's Royal Naval Service);

(b) convalidare i matrimoni contratti anteriormente alla entrata in vigore del D.L.L. 28 dicembre 1944, n.430, quando siano state osservate le condizioni stabilite nel decreto stesso.

2.- Una condizione non si sarebbe mai potuta osservare, e cioè la registrazione: ma rispetto a questa il Quartier Generale delle Forze Armate Alleate suggerisce che il richiesto provvedimento potrebbe stabilire che la registrazione sia eseguita entro sei mesi dall'entrata in vigore del provvedimento stesso, a richiesta dell'Ufficiale addetto alla custodia dei registri (Officer of Field Rank having custody of Records).

Legal	2-5	931
Section		
OCT 9 - 1946		

4007

2207

LEGAL

95A

UNITED FORCE HEADQUARTERS
G-5 Section
AFD 512

7 October 1946

SUBJECT: Marriages between Allied nationals.

TO : Chief Commissioner
Allied Commission
AFD 794

927A

Reference your AG/4007/L, 26 September 1946.

It is requested that a further report as to the progress of this matter be submitted.

BY COMMAND OF LIEUTENANT GENERAL MORGAN:

Shen
Major

for A. L. HAMBLIN
Colonel, C.S.C.
Assistant Chief of Staff, G-5.

4007
ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

Legal s/c.
94A

G-5: 931.11

8 August 1946

SUBJECT: Marriages between Allied Nationals.

TO : Chief Commissioner,
Allied Commission,
(Attn: Legal Sub-Commission)
APO 794.

1. Reference is made to your AC/4007/L dated 11 June 46 and this Headquarters letter of even reference, 31 July 46.
2. It is thought that the action requested in our above quoted letter will eliminate any possible query as to the legality of Anglo-American marriages celebrated by a chaplain of the United States Forces.
3. Now left for consideration is the question of Anglo-American marriages celebrated by a chaplain or other authorized person of the British Forces.
4. In accordance with the British Foreign Marriages Act 1892 Section 22, marriages celebrated within the British lines by a chaplain or officer officiating under the orders of the commander of an army serving abroad have equal validity with marriages celebrated in the United Kingdom.
5. As however there is no corresponding decree to DI 430 relating to British Forces thereby specifically bringing their chaplains within the scope of the law of 27 May 1929 No. 847 and Article 3 of the law of 24 June 1929 No. 1159, there may be doubts raised as to the validity of such marriages in Italian law.
6. As the American test for validity of a marriage is the validity of the marriage in the country of celebration, it follows that these same doubts will attach to an Anglo-American marriage celebrated under the Foreign Marriage Act 1892 Sec. 22 if the marriage is contested in the American Courts--although of course the marriage is perfectly legal in countries recognising the Foreign Marriages Act-1892.
7. Under authority granted by the British Commander-in-Chief officers of the British Judge Advocate General's Branch are also authorized to celebrate marriages within the scope of the Foreign Marriages Act, Sec. 22 so that even if existing Italian legislation recognised as legal certain marriages celebrated by British chaplains (e.g. R.C. chaplains), it is doubtful if recognition is extended to such entirely civil (as opposed to religious) marriages.

8. It is therefore suggested that while steps are being taken to eliminate any doubts concerning the validity of marriages celebrated by U.S. chaplains under DL 430 corresponding steps are taken to ensure the validity of British celebrated marriages.

9. To do this it is suggested that the Italian Ministry of Justice be approached and asked to publish a decree declaring as legally valid in Italy all marriages properly celebrated in Italy under the Foreign Marriages Act 1892 Sec. 22 and duly registered with the "Ufficiale di State Civile."

10. The registration would be optional or could be obligatory on the commanding officer of the formation to which one of the parties belongs (as in Article 2, DL 430).

11. Registration of past marriages could be made within say six months of the date of the decree, being effected by an officer of Field Rank having custody of Records.

12. The registration could embody the particulars required under DL 430 Article 2(1) with the addition of a certificate that the marriage was one properly performed under the Foreign Marriages Act - 1892, Sec. 22.

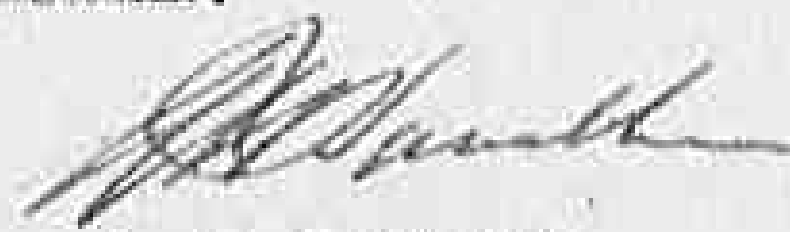
13. Should the Italian Ministry of Justice demur it can be pointed out to them that such a decree would also protect any of their own nationals who were married by authorised officers of the British Forces by eliminating any doubt as to the validity of their marriage in Italian law.

14. However as the prime object of this decree is to eliminate any possible doubts about Anglo-American marriages, the decree would be acceptable if it excluded Anglo-Italian marriages.

15. It would be appreciated if a draft of the proposed decree could be seen by this Headquarters before it is enacted.

16. It is requested that every endeavour be made to get this decree and the decree of interpretation referred to in our letter of even number 31 July 46 passed at the same time and at an early date.

BY COMMAND OF LIEUTENANT GENERAL MORGAN:



A. L. HAMBLEY
Colonel, G.S.C.
Assistant Chief of Staff, G-5.

CHIEF OF STAFF	
DEPUTY CHIEF OF STAFF	
DEPUTY CHIEF LEGAL ADVISOR	
CHIEF COUNSEL	AUG 9 1946
STAFF OFFICER	
INTELLIGENCE SECTION	
MEMBERS REVIEW	



C O P Y

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB COMMISSION

93A

MT/rm

AC/A007/1.

11 June 1946

SUBJECT : Marriage between members of the U.S.
and British Forces.

TO : AFHQ : G-5.

1. Reference your G-5 : 291.1 of 10th May 1946.

2. The proposals contained in your letter have been discussed on several occasions by the writer with the Italian Counsel who drafted the original Decree. A letter pointing out the precise amendments desired by AFHQ was sent to the Ministry of Justice, and the question was fully discussed at a conference with His Excellency AZZARITI, the head of the Ufficio Legislativo of the Ministry of Justice.

3. Signor AZZARITI pointed out that :

- a) In the first place that the objectives sought by AFHQ could be better reached by a legislative provision to be passed in Great Britain and in U.S.A., but since the decrees requested would not affect Italian nationals he is ready to issue it.
- b) In order to issue a decree properly drafted, the legislator should exactly know what are the real instances which the decree is meant to cover: it is particularly relevant to ascertain whether the marriages which AFHQ have in mind have been registered with the Ufficio di Stato Civile or not. If not, it will be necessary to set out in the decree a time limit within such marriages can be registered, but the consequence is that if such marriages are not registered within said time limit, they will be null and void for ever. Have AFHQ considered all this? And have they considered that they should inform the interested parties of the proposed decree?

./.

C O P Y

- c) Signor AZZARITI has finally stressed the point that it is absolutely impossible to waive the requirement of the registration of marriages, since such formality is an essential characteristic of the Italian legal system. On these assumptions Signor AZZARITI submits that it is useless to make the decree retrospective to a date earlier than that on which D.L.L. 430 became effective: Signor AZZARITI cannot see how could the interested parties have complied with the requirements of a law which was not in existence.

4. Signor AZZARITI's comment that, as the amendment is for the purpose of rendering valid marriages between English and American persons which might later be held to be invalid, the normal way to U.S.A., and in Great Britain, is perfectly correct. If the Law Drafting Department insisted on this point, we could not press for the enactment of the proposed amendment, because in accordance with the principles of law drafting AZZARITI is undoubtedly right. He is however ready to put forward an amendment, since it does ^{not} affect Italian nationals.

5. Before taking any further action it is necessary to have your comments on the observations made by Signor AZZARITI in paras (b) and (c) above.

For the Chief Commissioner :

MUSGRAVE THOMAS,
Italian Branch,
for Chief Legal Advisor.

FILE

HEADQUARTERS ALLIED COMMISSION
APO 754
LEGAL SUB COMMISSION

Q2A

AC/4007/1

TO/NO
26 September 1946

SUBJECT : Marriages between Allied nationals.

TO : AFHQ : 8-5.

1. Reference your 8-5 : 931.11 of
23 September 1946.

2. A reply to your letter of 2nd
September was dispatched from here on 15th September.

For the Chief Commissioner :

MURRAY THOMAS,
Italian Branch,
for Chief Legal Advisor.

ELL

4007

✓

1900.

Legal

Q1A

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

G-5: 931.11

28 September 1946

SUBJECT: Marriages between Allied nationals.

TO : Chief Commissioner
Allied Commission
APO 794

1. In this Headquarters letter of even reference dated 2 September 1946 you were asked to report on the progress being made in the negotiations with the Italian Ministry of Grace and Justice.

2. As yet no reply has been received. It is requested that the matter be expedited.

BY COMMAND OF LIEUTENANT GENERAL MORGAN:

Shen Major

for
A. I. HAMBLEN
Colonel, G.S.C.
Assistant Chief of Staff, G-5.

11B

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB-COMMISSION

Fr

90A

MT/pa.

23 Sept 46.

AC/4007/L.

SUBJECT : Application for an Italian Passport.

TO : No.798295 L/Bar Lack, #.,
Course V. M. 32
School of Mechanics, C.M.F.

In reply to your letter of 7th September I have to inform you that the correct procedure for an Italian requiring a Passport is to apply to the local Questura. I would therefore suggest that Mrs Nicoli applies to the local Questura, which in her case is probably Gorizia. This office will inform her of the particulars necessary to be supplied by her in order to obtain a Passport.

MUSGRAVE THOMAS,
Italian Branch,
for Chief Legal Advisor.

FILE

36

FILE

4007

LEGAL

N. A. A. F. I.

"HUSKY CLUB" - PADOVA

OFFICER	
IN SECTION	FILE
MEMBERS REVIEW BOARD	
SEP 12 1946	

no 79829589A

4 BDR. Lack. W.

Course. V.M. 32.

School of Mechanics

C. M. F.

7-9-46.

Sir,

I would like to seek
some information of which I
am writing below. through
Italian Channels.

I have been keeping an
Italian lady as my wife for
almost a year. this lady is
seperated from her husband.
but cannot get a divorce
as she is a Roman Catholic.

N. A. A. F. I.

"HUSKY CLUB," - PADOVA

but is willing to change her religion. Her home is at Monfalcone near Trieste. The husband is in Zone B. Jugoslavia. I want to take this lady with me to England. but I have to get her a passport. which I believe is from the Passport Office. Ministry of Rome. through Civilian Channels. At present I am on a course which finishes in October. after which I am getting 10 days leave. If you could advise me what to do
Sis. through Civilian Channels

N. A. A. F. I.
 "HUSKY CLUB," - PADOVA

As I know nothing can be done
 through Army Channels. I would
 be very grateful. Trusting Sir.
 I am not causing you a lot
 of inconvenience.

I am Sir.
 Very Gratefully.
 W. Lack.

This is the Ladies name and address.

Guerrina Nicoli.
 V. Vettor. Pisan n° 11.
 Monfalcone

Trieste.

FILE

HEADQUARTERS ALLIED COMMISSION
AFG 791
LEGAL SUB-COMMISSION

FILE
88A

W/rm.
13 September 1946.

AC/AGC/72.

SUBJECT : Marriages between Allied Nationals.
TO : AFHQ : 7-5.

1. Reference your G-5: 931.11 of 31 July and
8 August 1946.

2. The Italian Counsel who is drafting the amendments
has, I believe, completed them, but was unable to consult with the
head of the Legislative Department of the Ministry of Justice owing
to the fact that this official was away on vacation. The counsel
in question has gone on an official mission to London. Upon his
return shortly the draft amendments will be discussed at a
conference with Signor AL FILLI and copies of the draft decrees
will be submitted to you as soon as possible.

For the Chief Commissioner :

MURRAY E. THOMAS,
Italian Branch,
for Chief Legal Advisor.

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

1240
 PYA

G-5: 931.11

2 September 1946

SUBJECT: Marriages between Allied Nationals.

TO : Chief Commissioner,
Allied Commission,
APO 794.

Reference this Headquarters letters of even reference dated 31 July and 8 August 1946.

1. Will you please report on the progress being made in these negotiations with the Italian Ministry of Justice.

BY COMMAND OF LIEUTENANT GENERAL MORGAN:

for A. L. HAMBLIN
Colonel, G.S.C.
Assistant Chief of Staff, G-5

MEMBERS REVIEW BOARD

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

G-5: 931.11

2 September 1946

SUBJECT: Marriages between Allied Nationals.

TO : Chief Commissioner,
Allied Commission,
APO 794.

Reference this Headquarters letters of even
reference dated 31 July and 8 August 1946.

1. Will you please report on the progress being
made in these negotiations with the Italian Ministry
of Justice.

BY COMMAND OF LIEUTENANT GENERAL MORGAN:



A. L. HAMBLEN
Colonel, G.S.C.
Assistant Chief of Staff, G-5

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

P6A

G-5: 931.11

8 August 1946

SUBJECT: Marriages between Allied Nationals.

TO : Chief Commissioner,
Allied Commission,
(Attn: Legal Sub-Commission)
APO 794.

1. Reference is made to your AG/4007/L dated 11 June 46 and this Headquarters letter of even reference, 31 July 46.
2. It is thought that the action requested in our above quoted letter will eliminate any possible query as to the legality of Anglo-American marriages celebrated by a chaplain of the United States Forces.
3. Now left for consideration is the question of Anglo-American marriages celebrated by a chaplain or other authorized person of the British Forces.
4. In accordance with the British Foreign Marriages Act 1902 Section 22, marriages celebrated within the British lines by a chaplain or officer officiating under the orders of the commander of an army serving abroad have equal validity with marriages celebrated in the United Kingdom.
5. As however there is no corresponding decree to DL 430 relating to British Forces thereby specifically bringing their chaplains within the scope of the law of 27 May 1929 No. 847 and Article 3 of the law of 24 June 1929 No. 1150, there may be doubts raised as to the validity of such marriages in Italian law.
6. As the American test for validity of a marriage is the validity of the marriage in the country of celebration, it follows that these same doubts will attach to an Anglo-American marriage celebrated under the Foreign Marriage Act 1902 Sec. 22 if the marriage is contested in the American Courts--although of course the marriage is perfectly legal in countries recognising the Foreign Marriages Act-1902.
7. Under authority granted by the British Commander-in-Chief officers of the British Judge Advocate General's Branch are also authorized to celebrate marriages within the scope of the Foreign Marriages Act, Sec. 22 so that even if existing Italian legislation recognised as legal certain marriages celebrated by British chaplains (e.g. P.C. chaplains), it is doubtful if recognition is extended to such entirely civil (as opposed to religious) marriages.

31

8. It is therefore suggested that while steps are being taken to eliminate any doubts concerning the validity of marriages celebrated by U.S. chaplains under DL 430 corresponding steps are taken to ensure the validity of British celebrated marriages.

9. To do this it is suggested that the Italian Ministry of Justice be approached and asked to publish a decree declaring as legally valid in Italy all marriages properly celebrated in Italy under the Foreign Marriages Act 1892 Sec. 22 and duly registered with the "Ufficiale di Stato Civile."

10. The registration would be optional or could be obligatory on the commanding officer of the formation to which one of the parties belongs (as in Article 2, DL 430).

11. Registration of past marriages could be made within say six months of the date of the decree, being effected by an officer of Field Bank having custody of Records.

12. The registration could embody the particulars required under DL 430 Article 2(1) with the addition of a certificate that the marriage was one properly performed under the Foreign Marriages Act - 1892, Sec. 22.

13. Should the Italian Ministry of Justice demur it can be pointed out to them that such a decree would also protect any of their own nationals who were married by authorised officers of the British Forces by eliminating any doubt as to the validity of their marriage in Italian law.

14. However as the prime object of this decree is to eliminate any possible doubts about Anglo-American marriages, the decree would be acceptable if it excluded Anglo-Italian marriages.

15. It would be appreciated if a draft of the proposed decree could be seen by this Headquarters before it is enacted.

16. It is requested that every endeavour be made to get this decree and the decree of interpretation referred to in our letter of even number 31 July 46 passed at the same time and at an early date.

BY COMMAND OF LIEUTENANT GENERAL MORGAN:

ALH

A. L. HAMBLEN
Colonel, G.S.C.
Assistant Chief of Staff, G-5.

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

31 July 1946

9953
4007
95: 931.11

SUBJECT: Marriages between Allied Nationals.

TO : Chief Commissioner
Allied Commission
(Attn: Legal Sub-Commission)
APO 794.

Re your AG/4007/I dated 11 June 46.

1. The observations of Signor AZZARITI set out in your para 3(a) are appreciated but unfortunately it is not possible to regularize the marriages in the way suggested.

2. In America marriage is a State and NOT a Federal matter so that any legislation would require to be passed separately by each of the 48 States.

3. As the test of the validity of a marriage in America is whether or not the marriage is valid in the country in which it is contracted, it appears essential that the marriages should be regularized here in Italy.

4. To that end you are requested to ask the Ministry of Justice to publish a decree of interpretation retrospective to the date of DIL 430 which will include

British Subjects
"foreigners being either subject to the Naval Discipline Act, to Military Law or the Air Force Act or a member of the Women's Royal Naval Service"

within the terms

"Stranieri residenti in territorio italiano."

5. The decree shall cover both marriages registered with the Uffici di Stato Civile and marriages which have not been registered.

6. There should be no difficulty over the question of registration of the marriage contracted prior to the decree if a period of say six months was allowed for the registration after the date of the decree. Marriages subsequent to the decree would continue to be registered in accordance with DL 430, Article 2.

- 2 -

7. Registration of marriages prior to the decree would ~~have to~~ be effected by an Officer of Field Rank having custody of Records. This would be a necessary departure from DL 430, Article 2, as in many cases formations will by now have been disbanded.

8. As this matter has been long outstanding, it is requested that you will use every endeavour to bring it to an early conclusion.

9. It would be appreciated if a draft of the proposed decree of interpretation could be seen by this Headquarters before it is enacted.

BY COMMAND OF LIEUTENANT GENERAL MORGAN:



A. L. HAMBLEY
Colonel, G.S.C.
Assistant Chief of Staff, G-5.

CHIEF OF STAFF	
DEPUTY CHIEF OF STAFF	
CHIEF OF STAFF ADVISOR	
CHIEF COUNSEL	
STAFF OFFICER	
ITALIAN SECTION	
MEMBERS REVIEW BOARD	
AUG 2 1945	

HEADQUARTERS
MEDITERRANEAN THEATER OF OPERATIONS
UNITED STATES ARMY
APO 512

AG 291.1/104

6 July 1946

SUBJECT: Marriage Applications and Dependents of Military Personnel.

TO : Commanders of all Major Commands, Separate Units and
Installations, MTOUSA.

1. Letter this headquarters, file and subject as above, dated 6
December 1945, is superseded by this letter.

- a. (1) Personnel applying for marriage in this theater who are eligible or become eligible for return to the United States under redeployment regulations, will not be deferred solely for the purpose of processing their marriage applications unless they voluntarily sign a Class IV volunteer statement for a period of at least ninety days to cover the waiting period and processing of marriage application.
- (2) Personnel applying for marriage in this theater who are eligible or become eligible for return to the United States under the provisions of Section VI, War Department Circular 383, 1945, will not be deferred solely for the purpose of processing their marriage applications unless they voluntarily sign a waiver in accordance with Section VI, War Department Circular 383, 1945, for a period of at least ninety days to cover the waiting period and processing of marriage applications.
- b. (1) Personnel now in this theater who are eligible or become eligible to return to the United States under redeployment regulations and who now have or subsequently acquire civilian dependents in this theater may remain in the theater until such time as transportation for their dependents to the place of permanent residence of such personnel becomes available, provided they voluntarily sign a Class IV volunteer statement; otherwise, personnel eligible for return to the United States will be returned.
- (2) Personnel now in this theater who are eligible for return to the United States under the provisions of Section VI, War Department Circular 383, 1945, and who now have or subsequently acquire dependents in this theater may remain in the theater until such time as transportation for their dependents to the place of permanent residence of such personnel becomes available, provided they voluntarily sign a waiver in accordance with Section VI, War Department Circular 383, 1945; otherwise, personnel eligible for return to the United States will be returned.

Ltr Hq MTOUSA File AG 291.1/104, subject: "Marriage Applications and Dependents of Military Personnel", dated 6 July 1946 (Cont'd)

c. Class IV volunteer statements and waivers of rights to return to the Zone of Interior under Section VI, War Department Circular 383, 1945, signed in accordance with a and b above will not be altered or revoked, but may be voluntarily extended for periods of not less than sixty days.

2. Statements filed under the provisions of reference letter in paragraph 1 above are void.

3. Commanders will inform all personnel of their commands who submit marriage applications and those who now have dependents in this theater that the present emergency facilities in Naples cannot be increased. Unit commanders will urge and assist members of their commands to make adequate plans for care of their dependents at their present residences and will discourage movement of dependents to Naples and other ports of embarkation within the theater until such dependents are notified that transportation for them is available.

BY COMMAND OF LIEUTENANT GENERAL LEE:

Ralph C. Tilley
RALPH C. TILLEY
Colonel, AGD
Adjutant General

DISTRIBUTION:

"Z"

PROVINCIA DI Padova

MUNICIPIO
DI

VIGHIZZOLO D'ESTE

n. 1270

OGGETTO

Celebrazioni e simabli.
monio.

File LEGAL

19 giugno 1946

Pregiomi accusare ricevuta della

Lettera

in data 13 giugno 1946

n. c/c/4007/2

relativa all'oggetto emarginato

Al Ministero delle Corporazioni

Reapudazione Allied Commission

Apr 794

Legal Sub. Commission

Padova

ILL. SPODESTA O



Legal Div. from off
This lawyer says that
the Italian Govt does not
recognize divorces obtained
in the U.S. by Italian girls
married to Americans; he
asks for an agreement between
the Governments on this
matter.

No action

Napoli, 7 giugno 1946

Signor Ammiraglio E. Stone
Capo dell'Ammissione Militare in Italia
R o m a

Signore,

Desidero richiamare la vostra attenzione su un fatto di estrema gravità che dovrebbe formare oggetto di opportuni accordi col Governo Italiano.

Le sentenze di divorzio pronunziate dalle Corti Americane fra cittadini italiani o tra cittadini stranieri e cittadini italiani, non sono riconosciute valide (delibate) dall'Autorità Italiana.

Ne consegue che il coniuge divorziato negli Stati Uniti di America, per le leggi italiane continua ad essere legato da vincoli coniugali e patrimoniali col coniuge italiano.

Gli inconvenienti già gravissimi verificatisi nel passato si manifesteranno assai peggiori dopo il notevole numero di matrimoni tra appartenenti alle Forze Armate Americane e suddite italiane, ove tali matrimoni siano seguiti da divorzi.

Ne elencherò alcuni tra i più gravi:

- a) - Il suddito americano divorziato dalla cittadina italiana e nuovamente coniugato in America, potrà sempre essere arrestato ove di passaggio sul suolo italiano per il reato di bigamia;
- b) - I figli che la moglie italiana divorziata genererà dopo il divorzio, secondo la legge italiana, continueranno ad essere figli legittimi del coniuge divorziato, quantunque il marito sia oltremare, per effetto del mancato riconoscimento della rescissione del matrimonio;
- c) - Effetti patrimoniali - Non essendo riconosciuto il divorzio dalla legge italiana, la moglie italiana divorziata continuerà ad avere i diritti di successione sui beni del coniuge divorziato, il quale quindi non potrà mai possedere nessun bene in Italia.

I figli generati dopo il divorzio, dalla moglie divorziata con altri uomini, saranno eredi legittimi ove non si sia proceduto nei rigorosissimi termini di legge all'azione di disconoscimento da parte del suddito americano, probabilmente ignaro della loro nascita.

Ad evitare tutti tali gravi inconvenienti sembra rendersi necessario che o in sede armistiziale o in sede di trattato di pace,

fra cittadini italiani o tra cittadini stranieri e cittadini italiani, non sono riconosciute valide (delibate) dall'Autorità Italiana.

Ne consegue che il coniuge divorziato negli Stati Uniti d'America, per le leggi italiane continua ad essere legato da vincoli coniugali e patrimoniali col coniuge italiano.

Gli inconvenienti già gravissimi verificatisi nel passato si manifesteranno assai peggiori dopo il notevole numero di matrimoni tra appartenenti alle Forze Armate Americane e suddite italiane, ove tali matrimoni siano seguiti da divorzi.

Ne elenchero alcuni tra i più gravi:

- a) - Il suddito americano divorziato dalla cittadina italiana e nuovamente coniugato in America, potrà sempre essere arrestato ove di passaggio sul suolo italiano per il reato di bigamia;
- b) - I figli che la moglie italiana divorziata genererà dopo il divorzio, secondo la legge italiana, continueranno ad essere figli legittimi del coniuge divorziato, quantunque il marito sia oltremare, per effetto del mancato riconoscimento della rescissione del matrimonio;
- c) - Effetti patrimoniali - Non essendo riconosciuto il divorzio dalla legge italiana, la moglie italiana divorziata continuerà ad avere i diritti di successione sui beni del coniuge divorziato, il quale quindi non potrà mai possedere nessun bene in Italia.

I figli generati dopo il divorzio, dalla moglie divorziata con altri uomini, saranno eredi legittimi ove non si sia proceduto nei rigorosissimi termini di legge all'azione di disconoscimento da parte del suddito americano, probabilmente ignaro della loro nascita.

Ad evitare tutti tali gravi inconvenienti sembra rendersi necessario che o in sede armistiziale o in sede di trattato di pace, o in sede di trattato internazionale, il Governo degli Stati Uniti d'America, ottenga da parte del Governo Italiano il riconoscimento giuridico di tutte le sentenze di divorzio pronunziate dalle Corti Americane nei confronti dei cittadini italiani.

Grato se mi si vorrà accusare ricezione della presente, porto deferenti saluti.

Sciamini

Silvio Ascarelli
Parco Margherita 113
Napoli

File

81A

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB COMMISSION

AC/4007/L

MF/ns
13 June 1946

SUBJECT : Celebrazione di matrimonio.

TO : Sindaco di VIGHIZZOLO d'ESTE.

Per incarico del Comandante in Capo delle Forze Alleate
Tenente Generale H. J. MORGAN questa Sotto Commissione Alleata porta
a conoscenza di questo spettabile ufficio i seguenti fatti :

Il 9 Settembre 1945 a Vighizzolo d'Este (Padova) fu celebrato
un matrimonio civile, nubenti la Signorina Pierina Urbinati residente
a Padova, Via dei Cappuccini No. 4 e il S. O. H. Amos. Risulta a que-
sto Ufficio che il detto Amos aveva già contratto regolare matrimonio
il 21 Dicembre 1934. Sembrerebbe che questi non abbia prodotto certi-
ficato di stato civile libero quando richiese la celebrazione di ma-
trimonio a Vighizzolo d'Este.

Il matrimonio contratto a Vighizzolo d'Este non è stato quindi
registrato.

Tanto sopra si porta a conoscenza della S.V. per i prov-
vedimenti di legge.

Si prega di dare ricevuta della presente.

C. C. HANNAFORD,
Lt. Colonel,
Deputy Chief Legal Advisor.

Tel. No: ROME 489081, Ext. 573Subject: Marriage.

Hoot/L

Chief Legal Advisor,
Legal Sub CommissionCONFIDENTIALHeadquarters,
Allied Commission (ITALY),
C.M.F.Ref: G-1(S)/421/OR.

7 June 46.

S/273734. S.M.S. AMOS, H. - RASC.

1. Enclosed are two copies of A4, GHQ CMF letter 6163/A4 of 4 June 46.
2. It appears that the above-named W.O. entered into a form of marriage on 9 Sept 45., with a Pierina URBINATI, Via dei Cappuccini, PADOVA; this marriage has NOT been registered by GHQ, 2nd Echelon, on information received from Home Records to the effect that AMOS was married on 21 Dec 34, and that no record of separation or divorce is held.
3. Will you please take action to communicate the facts of this case to the Italian authorities, as requested by GHQ, CMF in their letter under reference.

R. S. Savill. Major

G-1 (S),
H.Q., Allied Commission.

/av.

Copy to : A4, GHQ CMF (ref your 6163/A4 of 4 June 46)
GHQ, 2nd Echelon, CMF.

action Taken H.

C O P YC O N F I D E N T I A L

GHQ CTF

Tel: FREEDOM 101

6163/A44 June 46Subject: Marriage.

Under Secretary of State,
The War Office,
LONDON, S.W.1.

S/275734 SQMS AMOS, H. - RASC.

1. It is desired to notify the following facts for any action that the War Office may think fit.
2. AF A43A has been received by GHQ 2nd Echelon in respect of a form of marriage entered into between the s/m WO and an Italian woman, Pierina URBINATI, Via dei Cappuccini No 4, Padua.
3. The ceremony was performed by the civil Segretario Comunale of Vighizzolo d'Este (near Padua) on 9 Sep 45.
4. Apparently this WO produced no certificate of freedom to marry, and no Consular certificate of "No Impediment".
The wife does not possess a British Emergency Certificate, and no application has been made for her repatriation.
5. Information has now been received from Home Records to the effect that AMOS was married on 21 Dec 1934, and that no record of separation or divorce is held.
6. The marriage has NOT been registered by GHQ 2nd Echelon.
7. SQMS AMOS returned to the UK in Feb 46 for release.

1. It is desired to notify the following issues for any comments that the War Office may think fit.
2. AF 443A has been received by GHQ 2nd Echelon in respect of a form of marriage entered into between the a/m WO and an Italian woman, Pierina URBINATI, Via dei Cappuccini No 4, Padua.
3. The ceremony was performed by the civil Segretario Comunale of Vighizzolo d'Este (near Padua) on 9 Sep 45.
4. Apparently this WO produced no certificate of freedom to marry, and no Consular certificate of "No Impediment".
The wife does not possess a British Emergency Certificate, and no application has been made for her repatriation.
5. Information has now been received from Home Records to the effect that AMOS was married on 21 Dec 1934, and that no record of separation or divorce is held.
6. The marriage has NOT been registered by GHQ 2nd Echelon.
7. SQMS AMOS returned to the UK in Feb 46 for release.

/rc.

/s/ ????????????

22

for W.D. MORGAN,
Lieut-General,
C in C.

Copy to: HQ Allied Commission
(for communication of facts to the Italian authorities).

GHQ 2nd Echelon.

"CERTIFIED TRUE COPY".

R.A. Savel
.....Major.

C O P YC O N F I D E N T I A L

GHQ CME

Tel: FREEDOM 101

6163/A44 June 46Subject: Marriage.

Under Secretary of State,
The War Office,
LONDON, S.W.1.

S/213734. SQMS AMOS.H. - RASC.

1. It is desired to notify the following facts for any action that the War Office may think fit.
2. AF A43A has been received by GHQ 2nd Echelon in respect of a form of marriage entered into between the s/m WO and an Italian woman, Pierina UMBINATI, Via dei Cappuccini No 4, Padua.
3. The ceremony was performed by the civil Segretario Comunale of Vignizzolo d'Este (near Padua) on 9 Sep 45.
4. Apparently this WO produced no certificate of freedom to marry, and no Consular certificate of "No Impediment".
The wife does not possess a British Emergency Certificate, and no application has been made for her repatriation.
5. Information has now been received from Home Records to the effect that AMOS was married on 21 Dec 1934, and that no record of separation or divorce is held.
6. The marriage has NOT been registered by GHQ 2nd Echelon.
7. SQMS AMOS returned to the UK in Feb 46 for release.

1. It is desired to notify the following facts for any action that the War Office may think fit.
2. AF 443A has been received by GHQ 2nd Echelon in respect of a form of marriage entered into between the a/m WO and an Italian woman, Pierina UBINATI, Via dei Cappuccini No 4, Padua.
3. The ceremony was performed by the civil Segretario Comunale of Vigonza d'Este (near Padua) on 9 Sep 45.
4. Apparently this WO produced no certificate of freedom to marry, and no Consular certificate of "No Impediment".
The wife does not possess a British Emergency Certificate, and no application has been made for her repatriation.
5. Information has now been received from Home Records to the effect that AMOS was married on 24 Dec 1934, and that no record of separation or divorce is held.
6. The marriage has NOT been registered by GHQ 2nd Echelon.
7. SQHS AMOS returned to the UK in Feb 46 for release.

/ro.

/s/ ?????????????

for W.D. MORGAN,
Lieut-General,
C in C.

Copy to: HQ Allied Commission
(for communication of facts to the Italian authorities).

GHQ 2nd Echelon.

"CERTIFIED TRUE COPY".

R. S. Smith
.....Major.

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB-COMMISSION

MT/rm.

11 June 1946.

AC/4007/L.

SUBJECT : Marriage between members of the U.S.
and British Forces.

TO : AFHQ : G-5.

1. Reference your G-5 : 291.1 of 10th May 1946.

2. The proposals contained in your letter have been discussed on several occasions by the writer with the Italian Counsel who drafted the original Decree. A letter pointing out the precise amendments desired by AFHQ was sent to the Ministry of Justice, and the question was fully discussed at a conference with His Excellency AZZARITI, the head of the Ufficio Legislativo of the Ministry of Justice.

3. Signor AZZARITI pointed out that:

(a) In the first place that the objectives sought by AFHQ could be better reached by a legislative provision to be passed in Great Britain and in U.S.A., but that since the decree requested would not affect Italian nationals, he is ready to issue it.

(b) In order to issue a decree properly drafted, the legislator should exactly know what are the real instances which the decree is meant to cover: it is particularly relevant to ascertain whether the marriages which AFHQ have in mind have been registered with the Uffici di Stato Civile or not. If not, it will be necessary to set out in the decree a time limit within which such marriages can be registered, but the consequence is that if such marriages are not registered within said time limit, they will be null and void for ever. Have AFHQ considered all this? And have they considered that they should inform the interested parties of the proposed decree?

(c) Signor AZZARITI has finally stressed the point that it is absolutely impossible to waive the requirement

- 2 -

of the registration of marriages, since such formality is an essential characteristic of the Italian legal system.

On these assumptions Signor AZZARITI submits that it is useless to make the decree retrospective to a date earlier than that on which D.L.L. 430 became effective; Signor AZZARITI cannot see how could the interested parties have complied with the requirements of a law which was not in existence.

4. Signor AZZARITI's comment that, as the amendment is for the purpose of rendering valid marriages between English and American persons which might later be held to be invalid, the normal way to achieve the object desired would be by an act of the Legislature in U.S.A., and in Great Britain, is perfectly correct. If the Law Drafting Department insisted on this point, we could not press for the enactment of the proposed Amendment, because in accordance with the principles of law drafting Signor AZZARITI is undoubtedly right. He is however ready to put forward an amendment, since it does not affect Italian nationals.

5. Before taking any further action it is necessary to have your comments on the observations made by Signor AZZARITI in paras (b) and (c) above.

For the Chief Commissioner ;

MUGRAVE THOMAS,
Italian Branch,
for Chief Legal Advisor.

STUDIO VASSALLI
10 LUNGOTEVERE VALLATI, ROMA

PROF. FILIPPO VASSALLI
PROF. GIUSEPPE FERRI
PROF. GIULIANO VASSALLI
PROF. PASQUALE CHIOMENTI

[Handwritten signature]

Rome, 8th June 1946

Alleged Commission
Leg. 1 Sub-Commission, Rome
(attention: Judge Eustache Thomas).

1. Reference our conversation and conference held at the Ministry of Justice on June 4th 1946.

2. Attached herewith is the draft letter that we agreed you should send to the Ministry of Justice.

3. You asked me to sum up the observations made by His Excellency Azzeriti, head of the Ufficio Legislativo at the Ministry of Justice.

(a) Signor Azzeriti pointed out in the first place that the objectives sought by A.F.E.L. could better be reached by a legislative provision in Great Britain and in U.S.A., but that since the decree requested would not affect Italian nationals, he is ready to issue ^{the} ~~the decree in question~~.

(b) Signor Azzeriti pointed out that in order to issue a decree properly drafted, the legislator should exactly know what are the real instances which the decree is meant to cover: it is particularly relevant to ascertain whether the marriages which A.F.E.L. have in mind have been registered with the Ufficio di Stato Civile or not. If not, it will be necessary to set out in the decree a time limit within which such marriages can be registered: but the consequence is that if such marriages are not registered within said time limit, they will be null and void for ever. Have A.F.E.L. considered all this? And have they considered that they should inform the interested parties of the proposed decree?

(c) Signor Azzeriti has finally stressed the point ¹⁸ ~~that~~ it is absolutely impossible to give the requirement of the registration of marriages, since such formality is an essential characteristic of the Italian legal

STUDIO VASSALLI
IN LUNGOTEVERE VALLATI, ROMA

PROF. FILIPPO VASSALLI
PROF. GIUSEPPE FERRI
PROF. GIULIANO VASSALLI
PROF. PASQUALE CHIOMENTI

TEL. 59521

-2-

system.

On these assumptions Signor Azzariti submits that it is useless to make the decree retrospective to a date earlier than that on which D.F.I. 400 became effective: Signor Azzariti cannot see how could the interested parties have complied with the requirements of a law which was not in existence.

3. I think I have summed up all the relevant points which were discussed in the conference with Signor Azzariti.

I am returning to you all the files.

With kindest regards

Yours sincerely
Thurmond

AL MINISTERO DI GRAZIA E GIUSTIZIA,

R O M A.

OGGETTO: Matrimonio fra appartenenti alle Forze Armate degli Stati Uniti d'America ed appartenenti alle Forze Armate Britanniche.

1.- Il Quartier Generale delle Forze Armate Alleate ha dato istruzioni alla scrivente Sotto Commissione di richiedere al Governo Italiano la emanazione di un provvedimento legislativo inteso a rendere validi i matrimoni contratti in territorio italiano fra stranieri appartenenti alle Forze degli Stati Uniti, soggetti a legge militare, terrestre o marittima, e stranieri di nazionalità britannica che siano soggetti all'Atto di Disciplina Navale (Naval Discipline Act), a legge militare (Military Law), all'atto dell'Aviazione (Air Forces Act), o che appartengano al Regio Servizio Navale Femminile (Women's Royal Naval Service), secondo la forma prescritta nel D.L.I. 28 dicembre 1944, n. 430.

2.- Atteso che matrimoni del genere di quelli sopra indicati sono stati contratti dalla data di entrata in vigore del matrimonio D.L.I. n. 430 e prima ancora che tale decreto fosse emanato,

1.- Il Quartier Generale delle Forze Armate Alleate ha dato istruzioni alla scrivente Sotto Commissione di richiedere al Governo Italiano la emanazione di un provvedimento legislativo inteso a rendere validi i matrimoni contratti in territorio italiano tra stranieri appartenenti alle Forze degli Stati Uniti, soggetti a legge militare, terrestre o marittima, e stranieri di nazionalità britannica che siano soggetti all'Atto di Disciplina Navale (Naval Discipline Act), a legge militare (Military Law), all'atto dell'Aeronautica (Air Forces Act), o che appartengano al Regio Servizio Nava le Femminile (Woman's Royal Naval Service), secondo la forma prescritta nel D.I.I. 28 dicembre 1944, n. 430.

2.- Atteso che matrimoni del genere di quelli sopra indicati sono stati contratti dalla data di entrata in vigore del menzionato D.I.I. n. 430 e prima ancora che tale decreto fosse emanato, Il Quartier Generale delle Forze Alleate richiede che il nuovo provvedimento che forma oggetto della presente lettera abbia efficacia

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retroattiva, si da ricomprendere tutti i matrimoni contratti - nelle
le forme stabilite col D.L.I. n. 430 - dall'inizio dell'occupazione
del territorio italiano da parte delle Forze Armate Alleate fino
all'entrata in vigore del nuovo provvedimento.

15

all'entrata in vigore del nuovo provvedimento.

1007
7024
ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

G-5: 291.1

10 May 1946

SUBJECT: Marriage Between Members of U.S. and
British Forces.

TO : Headquarters, Allied Commission
APO 394

Reference your AC 4007/1 dated 20 April 1946.

1. Your suggestion in par 2 that the Italian Government should be asked -

'to enact a law stating that the term "Stranieri residenti in territorio italiano" employed in Art. 1 of Decree No. 430 dated 28 December, 1944, shall include members of the British Forces,'

is concurred in, with the following exception:-

In lieu of "members of the British Forces" substitute "foreigners being British subjects either subject to the Naval Discipline Act, to Military Law or the Air Force Act or a member of the Woman's Royal Naval Service."

2. The principle reason for the proposed amendment is generally to place marriages of British subjects on the same basis as marriage of Americans under Decree 430. Since marriages have taken place with British subjects since the effective date of Decree 430 it is deemed necessary to invoke a retroactive decree as was indicated in Art II of the previous draft submitted by this HQ and as is referred to in your letter par 4. The prime consideration is an effective retroactive feature to render marriages performed since the effective date of Decree 430.

3. It is believed that some marriages were performed after the date of occupation of Italy by the Allied Forces and before the effective date of Decree 430. It is possible that in anticipation of the enactment of Decree 430, the contracting parties had substantially complied with the terms and procedure as given in Decree 430. It is essential that the Italian Government should be pressed to make the proposed new law retrospective to extend to the date of occupation. There is always the possibility of difficult questions arising at some future date regarding the validity of a marriage, which might affect the succession to property.

4. It is requested that the Italian Government enact

the above decree as expeditiously as possible.

BY COMMAND OF LIEUTENANT GENERAL MORGAN:



A. J. HAMBLEN
Brigadier General, G.S.C.
Assistant Chief of Staff, G-5.

LEGAL SUB-COMMISSION	
CLO	
DCLO	
Chief Counsel	
CJO	
→ Policy Section	
CL RKS	
13 May 46	

HEADQUARTERS ALLIED COMMISSION
AFG 394
LEGAL SUB COMMISSION

AG/4907/L

45.08
20 April 1946.

SUBJECT : Marriage between members of U.S. and British Forces.

TO : AFHQ : G-5.

1. Reference your letter G-5: 291.1 of 22nd March 1946.

2. It is assumed that the object of the amendment proposed in your letter is only to provide for marriages between members of U.S. Forces and members of the British Forces. If this is correct, the best way to attain this object is to request the Italian Government to enact a law stating that the term "Stranieri residenti in territorio italiano" employed in Art. 1 of Decree No. 430 dated 28 December, 1944, shall include members of the British Forces. Such law being one of interpretation will have effect from the same date as Decree No. 430.

3. The question has been examined with the same Italian Counsel mentioned in our previous letter of 7th November last, who discussed the matter with a member of the Ufficio Legislativo of the Ministry of Justice. As a result of these consultations it can be said that the Ministry would be ready to recommend the enactment of such an interpretation law.

4. If it is desired to validate marriages performed before the date Decree No. 430 came into operation, 26th January, 1945, this would require an ordinary law having retrospective operation. On principle there is a general objection to the enactment of laws having retrospective operation. The present law, however, is not such a law to which this principle would ordinarily apply; it is an enabling law granting certain facilities to persons contracting marriage

which but for this law would not be valid. For those reasons it is considered that the Italian Government would be ready to pass an amending law having retrospective effect especially as there exist precedents for the enactment of laws of a similar type having retrospective effect.

5. Upon learning what is the precise scope of the amendment desired, as mentioned in paras 2 and 4, this Sub Commission will request the Government to enact the appropriate Decree.

MUSGRAVE THOMAS,
Italian Branch,
for Chief Legal Advisor.

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MCA

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

G-5: 291.1

22 March 1946.

SUBJECT: Marriage.

TO : Headquarters, Allied Commission,
APO 394.

Reference AC 4007/L dated 7 November 1945.

1. Request the Italian Ministry of Justice to draft and enact a decree broadening the scope of Legislative Decree No. 430 dated 28 December 1944 in substantially the following words:

ARTICLE I.

"For the purpose of the celebration of marriage in Italian Territory between a foreigner belonging to the U.S. Forces, subject to Military Law, land or maritime, and a foreigner being a British subject and being either subject to the Naval Discipline Act, to Military Law or the Air Force Act or a member of the Women's Royal Naval Service, the Catholic chaplains of the said forces shall be deemed to be ministers of the Catholic Religion in the sense of the law of 27 May 1929, No. 847, and the non-Catholic chaplains shall be deemed of the same standing as ministers of the religions admitted by the State, nominated and approved in accordance with Article 3 of the law of 24 June 1929, No. 1159.

Marriage celebrated before the said chaplains shall produce civil effects as of the date of the celebration when it is followed by transcription in the registers of the Italian Vital Statistics Records ("Registri dello Stato Civile") Office pursuant to the provisions contained in the following article.

ARTICLE II.

Marriages in the case of a person or persons in the category listed in par 1 above, performed between the date of the occupation of Italy by the Allied forces and the effective date of this decree are hereby validated, provided the contracting parties have complied with Articles 2, 3 and 4 of the Legislative Decree of the Lt. Gen. No. 430 dated 28 December 1944.

10

ARTICLE III

The provisions of Decree No. 430 exclusive of Article 1 shall be applicable to marriages contracted under par 1 and 2 above."

BY COMMAND OF LIEUTENANT GENERAL MORGAN:



A. L. HAMBIEN
Brigadier General, GSC
Assistant Chief of Staff, G-5

REG	18 JUN 1946
CLO	
DCLO	
Chief Counsel	
CJO	
→ Italion Section	
CI RKS	
25 March 46	

HEAD QUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB COMMISSION

73A

AC/4007/L

/In
7 November 1945

SUBJECT : Marriages between members of U.S. - and British Forces :
Interpretation of Art. 1 of Decree No. 430 of 28th December,
1944.

TO : HQ MFOUSA, APO 512.

1. Reference your 291.1/104 - P of 6th October 1945 regarding the validity of marriages contracted between members of the U.S. Forces and members of the British Forces.
2. The question upon which this Sub Commission has been asked to obtain an authoritative opinion is whether a member of the British Forces comes within the meaning of the term "stranieri residenti in territorio italiano" in Art. 1 of Decree No. 430.
3. Counsel of the highest standing in Rome has been consulted on this question of the interpretation of an Italian Decree. His opinion after careful consideration is definitely that members of the British Forces cannot be considered as being "foreigners resident in Italy". Art. 43 of the Code defines residence as "the permanent abode of a person". It should be added that the Decree was intended to apply only to members of the U.S. Forces to the exclusion of members of the British Forces. He is consequently of opinion that Decree No. 430 does not include within its provisions a marriage between a member of the U.S. Forces and a member of the British Forces. Several other experienced Italian counsel were consulted and each expressed his entire concurrence with the opinion expressed above.
4. The counsel in question consulted a member of the Ufficio Legislativo (of the Ministry of Justice) who is responsible for the drafting of Decrees. This official concurred in the view stated in para 3, but, on being told that it would therefore be necessary to amend the Law, he said that in order to avoid a new law he was ready to give an official opinion that, although stricto jure the members of the British Forces cannot be considered as resident in Italy, they may be included within the provisions of the Decree according to a wider interpretation.
5. In my opinion the view of counsel set out above is undoubtedly correct, and the suggested wider interpretation is definitely wrong.
6. It was further stated by counsel, and I am in entirely agreement with him, that the validity of marriages contemplated in

para 1 of your letter would very likely be called in question in the future, and that the only way of avoiding such difficulties would be to amend the law by making it also applicable to members of the British Forces, as it was when originally drafted.

7. On the question of amending the law I would suggest you obtain the views of G-5 AFH.
8. I might add that quite apart from the Decree in question a marriage between a member of the U.S. Forces and a member of the British Forces can be validly contracted under the ordinary Italian law.

For Chief Commissioner

MURGRAVE THOMAS,
Italian Branch,
for Chief Legal Advisor.

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F.A. Sec

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HEADQUARTERS
MEDITERRANEAN THEATER OF OPERATIONS
UNITED STATES ARMY
APO 512

WRS/jd

In reply
refer to

6 October 1945

AG 291.1/104-P

SUBJECT: Marriage

TO: Headquarters
Allied Commission ✓
APO 394

1. A question has arisen concerning the interpretation of Article 1 of Legislative Decree of the Lieutenant General No 430 of 28 December 1944. The opinion has been expressed that this article does not include within its provisions a marriage between a member of the U.S. Forces and a member of the British Forces as the members of the British Forces are not "foreigners resident in Italy" (stranieri residenti in territorio italiano).

2. It is requested that you will obtain the opinion of the appropriate Italian Government agency on this matter. If the view indicated in paragraph one is the view of the Italian Government it is suggested that it may be expedient to suggest that the reference decree be amended in order to include within its terms members of the British Forces.

3. In the event that the Italian Government construes the decree in such manner that members of the British Forces are included within the existing provisions, it is requested that their opinion may be made available to this Headquarters. In view of the general principle that the validity of a marriage is governed by the law of the place of performance, it may be that if the Italian Government expressed the view that no amendment to the decree is necessary in order to permit valid marriages between the members of U.S Forces and British personnel in Italy, the opinion referred to in paragraph one can be reconsidered.

BY COMMAND OF GENERAL MCNARNEY:

DCLO
Chief Counsel
CJO

W. R. SHIPLEY
Major, AGD
Asst Adjutant General

5 OCT 1945



To: Judge Murgrave Thomas

72B

1. - Reference paras 1 & 2 of the letter from MTOUSA, dated October 6th 1945, I am of the opinion that D.L.L. no 430 of 28 December 1944 does not include within its provisions a marriage between a member of the U.S. Forces and a member of the British Forces -

Art. 1 of said D.L.L. no 430 provides for marriages between members of the U.S. Forces, and between a member of the U.S. Forces and an Italian subject or a ~~member~~ foreigner resident in Italy.

Members of the British Forces cannot be considered as being foreigners resident in Italy - Art. 43 of the Civil Code defines the residency as "the ~~last~~ ^{permanent} abode" of a person -

The forms of marriage ~~now~~ set out by the D.L.L. in question ~~must~~ cannot therefore be used in a case like that described in the letter from MTOUSA.

(2)

2. - The Ministry of Justice (Ufficio Legislativo), whom I have consulted, concurs ^{with} my opinion.

According ~~with~~ to the suggestion contained in Para 2 of the letter from MIOUSA, I have told Sig. Arzanti (who is the Chief, Ufficio Legislativo) that it will be necessary to amend the decree in order to include within its terms also the members of the British Forces.

Sig. Arzanti has replied that, in order to avoid a new law, he is ready to give an official opinion saying that although "straniero" the members of the British Forces cannot be considered as resident in Italy, they may be included within the provisions of the decree according to a proper interpretation.

3. - I personally am against such a proper interpretation, which ~~is not~~ can be questioned at any time - I wish to call your attention to the
-/-

4007 file

3 NOV 1945

71A

Legal

MESSAGEFORM
HEADQUARTERS
MEDITERRANEAN THEATER OF OPERATIONS
U. S. ARMY, APO 512

FILE NO. AG 291.1/104-P

Office of origin AG Personnel

Address APO 512, U. S. Army

SUB: 15 November 1945
Date 1 November 1945

PRECEDENCE

WIRE OR RADIO	ESSENTIAL MILITARY MAIL
URGENT	AIR MAIL
PRIORITY	SPECIAL DELIVERY
ROUTINE	ORDINARY
DEFERRED	REGISTERED
WORK END	

To : Commanding Officer
Headquarters Allied Commission
APO 394

ANY MESSAGE NOT Y'D FOR
PRECEDENCE WILL BE SENT DEFERRED

INITIAL

1. Reference is made to letter this headquarters file AG 291.1/104-P dated 6 October 1945, subject: "Marriage", to which no reply has yet been received.

2. It is requested that this headquarters be informed by return indorsement hereon, action being taken and expected date that reply will reach this headquarters.

BY COMMAND OF LIEUTENANT GENERAL RIDGWAY:

M. F. DWYER
1st Lt AGD
Asst Adj General

TO : HQ., MATOUSA.

FROM: Legal Sub-Commission, HQ.AC.

1st Ind.

A reply to your letter on the above subject will be sent within a few days. The delay in answering is much regretted. An opinion was obtained more than a fortnight ago from an Italian Counsel of the highest standing, and upon considering this opinion it was considered desirable to take further opinions upon the interpretation of the Italian decree in question, including an official at the Ministry of Justice who is engaged on the drafting of Decrees, and this has been the cause of the delay.

MUSGRAVE THOMAS,
Italian Branch
For Chief Legal Advisor.

HEADQUARTERS FLORENCE COMMAND
CIVIL AFFAIRS OFFICE

591
LEGAL
70A
2 August, 1945.

SUBJECT : Forwarding of Correspondence from OC, 57 Mobile
Laundry & Bath Unit re 5830141 Pte. TURPIN, R.J.

TO : HQ, AC, Rome.

1. The enclosed memos are forwarded to you because
there is no local agency to take care of them here.

Encl/
JMW/CB.

1st Ind.

HQ., ALLIED COMMISSION, Legal Sub-Commission.

TO : HQ, RAAC.

5 August 1945.

Forwarded for such action as you deem necessary.
For the Chief Commissioner.

Lester C. Bern Capt Inf
for W. E. BEHRENS,
Colonel,
Chief Legal Advisor.

2nd Ind.

Office of AC of S, G-2, ROME AREA ALLIED COMMAND.

To : ALLIED COMMISSION, Legal Sub-Commission.

1. Correspondence has been forwarded to HQ, 1
District, in whose area RAPOLANO lies.
2. It should be noted that at this HQ we can only
deal with matters which lie within our own Command.

randyoung
(D.A.D. YOUNG)
Lt. Col., C.S.,
AC of S, G-2(CI).

PT

6 Aug 45

6 Aug 45

6/8

158E

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4007/L.

3 June 1945. /Lm.

SUBJECT : Marriage with Italians - Pte COUCH H.
TO : Area Commander, Rome Allied Area Command.

The attached letter A 55/4 dated 31 May 1945 has apparently been addressed to the Allied Commission in error, and is forwarded to you for action as indicated in (c) thereof.

Encl:
Letter

Copy to: HQ 57 Area, CMF

W. E. BEHRENS,
Colonel,
Deputy Chief Legal Adviser.

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