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***1484 12. Chinese Divorce Valid Even Without
Physical Appearance, BIA Finds**

In an unpublished decision, the Board of Immigration Appeals (BIA or Board) overturned a district director's determination that a beneficiary was not eligible for the requested immigrant visa because his divorce from his first wife was not valid under New York law. *Matter of [name not provided]*, file no. A70 909 147 (May 18, 2006), New York District Office.

The beneficiary is a native and citizen of China. In 1986, he married his first wife, also a native and citizen of China. In 1990, they had a child in China. In 1992, the beneficiary came to the U.S., followed by his wife in 1994. The couple was granted a divorce in China in November 1995. Neither party personally appeared, although they consented to personal jurisdiction and were represented by relatives in the divorce. The beneficiary married his second wife, the petitioner in the matter, in New York on July 24, 2000.

The District Director for the New York office determined that, in order for the beneficiary to receive immigrant benefits, the divorce from his first wife must be valid under New York law since that was the location of the underlying marriage. The District Director, relying on *Matter of Luna*, 18 I. & N. Dec. 385, 386 (BIA 1983), which held that there must be some physical presence on the part of at least one party to a divorce within the jurisdiction rendering the divorce, determined that the divorce was not in fact valid. The Board noted, however, that a prior case, *Matter of Ma*, 15 I. & N. Dec. 70, 72 (BIA 1974), specifically cited case law from New York and found that substantial contacts with the jurisdiction presiding over the divorce existed when:

(1) the parties were married in the jurisdiction where they were subsequently divorced; (2) they lived in that jurisdiction as husband and wife for a period of time; (3) although they were not personally before the divorcing court or even within the jurisdiction at the time of the divorce, both parties had notice of the action and either appeared by counsel or consented to personal

jurisdiction; and (4) both parties to the divorce were citizens of the country granting the divorce.

Looking at the facts of the current case, the BIA found that all four of the criteria were established. The beneficiary and his first wife, both citizens of China, were married and subsequently divorced in China where they had lived as husband and wife for several years. Further, the beneficiary and his first wife consented to personal jurisdiction and had notice of the proceedings. Given these circumstances, the BIA concluded that, under New York law, the divorce was valid.

The Board sustained the appeal and approved the visa petition.

Alan Lee, New York, New York, represented the petitioner. *1485

Jason Raphael, Associate Regional Counsel, Department of Homeland Security, represented the government.

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