

**Board of Contract Appeals**  
General Services Administration  
Washington, D.C. 20405

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December 20, 2000

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GSBCA 15382-RELO

In the Matter of AMMUNNI S. BALASUBRAMANIAN

Ammunni S. Balasubramanian, Chillicothe, OH, Claimant.

Bonnie Britten, Chief, Travel Policy Division, Department of Veterans Affairs, Washington, DC, appearing for Department of Veterans Affairs.

**DANIELS**, Board Judge (Chairman).

The Department of Veterans Affairs transferred Dr. Ammunni S. Balasubramanian from one permanent duty station to another in February 2000. The agency allowed Dr. Balasubramanian to use the services of a relocation services contractor at Government expense, but refused to permit the sale through that contractor of the house he identifies as his residence at his old station, a dwelling in Alpharetta, Georgia. Dr. Balasubramanian asks us to review the agency's decision.

Under the Federal Travel Regulation (FTR), the services of a relocation contractor may be made available to a transferred employee only when the agency might otherwise pay for the expenses the employee incurs in selling or buying a home. 41 CFR 302-12.3 (1999). These expenses are reimbursable only if the title to the dwelling "is in the name of the employee alone, or in the joint names of the employee and one or more members of his/her immediate family, or solely in the name of one or more members of his/her immediate family." Id. 302-6.1(c). The term "immediate family" includes the employee's spouse; children or dependent siblings of the employee or the employee's spouse who are unmarried and under twenty-one years of age or who, regardless of age, are physically or mentally incapable or self-support; and dependent parents of the employee or the employee's spouse. Id. 302-1.4(f).

Title to Dr. Balasubramanian's residence in Alpharetta, Georgia, was in the name of Kamala Nair. Dr. Balasubramanian and Ms. Nair were married from 1965 to 1993. They were divorced in 1993, and title to the home was in the name of Ms. Nair alone at the time Dr. Balasubramanian was transferred. The agency reasoned that because Dr. Balasubramanian and Ms. Nair were not legally married at that time, title was not in the name

of a member of the doctor's immediate family, so the Government could not pay for a relocation contractor's services in selling the house.

Dr. Balasubramanian concedes that at the time of the transfer, he and Ms. Nair had not secured a marriage license from the State of Georgia. He describes a relationship between the two individuals which is very different from ex-spouses, however. In 1994, while living in Georgia, the two of them "resolved our differences and renewed our marriage vows in a religious ceremony before living together again as man and wife." In the same year, Ms. Nair redrafted her will to leave virtually all of her estate, at the time of her death, to Dr. Balasubramanian. According to the doctor, since renewing vows, he and Ms. Nair "have . . . been living together as husband and wife." Their children and members of their community have understood them to have been remarried, and they have held themselves out to others, such as the employees of the medical center to which he has been transferred, as husband and wife.

By providing us with this information (none of which the agency contests), Dr. Balasubramanian is effectively asking us to conclude that notwithstanding the lack of a marriage license, Ms. Nair is a member of his immediate family -- his spouse.

Issues of marital status are determined by state law. James H. Perdue, GSBCA 14122-RELO, 98-1 BCA ¶ 29,674. Some states recognize common-law marriage -- "[a] marriage that takes legal effect, without license or ceremony, when a couple live together as husband and wife, intend to be married, and hold themselves out to others as a married couple." Black's Law Dictionary 986 (7th ed. 1999). Georgia is one of these states; it recognizes common-law marriages which were entered into in that state before January 1, 1997. Ga. Code Ann. § 19-3-1.1 (1999). We consider claims of common-law marriage with regard to the law of the state in which the alleged relationship began. Thomas E. Casey, GSBCA 15207-RELO, 00-2 BCA ¶ 30,952; Kathy B. Schumer, GSBCA 14531-RELO, 98-2 BCA ¶ 29,863; Perdue. Thus, if under Georgia law, Dr. Balasubramanian and Ms. Nair meet the tests for a common-law marriage, they will be considered to have been married. We asked the doctor to provide us with any information he might have as to this issue. Although he did not give us anything other than the statements in his claim, we are able, based on those statements and our own investigation of Georgia law, to make a conclusion on the matter.

In Georgia, "[t]o constitute a valid marriage . . . there must be: (1) Parties able to contract; (2) An actual contract; and (3) Consummation according to law." Ga. Code Ann. § 19-3-1. These elements are essential to prove a common-law marriage, as well as any other marriage. Metropolitan Life Insurance Co. v. Lucas, 761 F. Supp. 130, 132 (M.D. Ga. 1991); Brown v. Brown, 234 Ga. 300, 301, 215 S.E.2d 671, 672-73 (1975). Whether a common-law marriage exists or not is a question of fact, and the burden is on the party asserting the validity of the marriage to show that it actually existed. Baynes v. Baynes, 219 Ga. App. 848, 849, 467 S.E.2d 195, 196 (1996); Dismuke v. C&S Trust Co., 261 Ga. 525, 526, 407 S.E.2d 739, 740 (1991); Brown v. Brown, 234 Ga. at 301, 215 S.E.2d at 673.

The evidence presented by Dr. Balasubramanian meets these tests. The doctor and Ms. Nair were "able to contract" because they were of sufficient age and of appropriate (unmarried) status to enter into a marriage. An "actual contract," as that term is understood in Georgia courts, existed. The seminal decision on common-law marriages in the state,

Askew v. Dupree, 30 Ga. 173 (1860), established that the "deliberate[] and intentional[]" taking of marriage vows meets the requirement for contract, and this couple took such vows. See also Metropolitan Life Insurance Co. v. Lucas, 761 F. Supp. 130, 132 (M.D. Ga. 1991) (accepting "shared agreement to become husband and wife" as evidence of contract); Fireman's Fund Insurance Co. v. Smith, 151 Ga. App. 270, 272, 259 S.E.2d 675, 677 (1979) (accepting couple's agreement to take care of each other, though without formal marriage); Lavender v. Wilkins, 237 Ga. 510, 515, 228 S.E.2d 888, 892 (1976) (accepting marriage vows). "Consummation according to law" -- or, as that term is commonly understood, cohabitation as man and wife -- clearly occurred. See Brown v. Brown, 234 Ga. at 301, 215 S.E.2d at 673; Fireman's Fund, 151 Ga. App. at 271, 259 S.E.2d at 676. All this occurred before January 1, 1997. The fact that Dr. Balasubramanian and Ms. Nair have conducted themselves as married persons and held themselves out as such for six years is ratification of the existence of the marriage. Brown v. Brown, 234 Ga. at 302, 215 S.E.2d at 673; Fireman's Fund, 151 Ga. App. at 272, 259 S.E.2d at 677.<sup>1</sup>

We therefore conclude that at least for purposes of relocation benefits arising from Dr. Balasubramanian's transfer, Ms. Nair is the doctor's wife, so the fact that title to their home in Georgia is in her name is not an impediment to the agency's payment for services of a relocation contractor in selling that residence.

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STEPHEN M. DANIELS  
Board Judge

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<sup>1</sup>It is true that the couple intend to marry formally at a later date. Under Georgia law, however, "[t]he fact that they plan[] at some point in the future to secure a license and formalize their union with a ceremonial marriage [does] not negate the existence of a common-law marriage." Brown v. Carr, 198 Ga. App. 567, 568-69, 402 S.E.2d 296, 298 (1991).