

論移民法禁止期約報酬之跨國婚姻

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關鍵詞：移民政策、人蛇集團、國家利益、公民身分、非法移民

Keywords : Immigration Policy; Human Smuggling Syndicate; National Interest; Citizenship; Illegal Immigration

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摘要

擁有公民身分，代表作為一個國家的國民，受到了該國憲法上除妨害社會秩序公共利益者外，所賦予並保障的一切自由與權利。外籍人士欲進入他國居住，不論未逾六個月的停留，或居住期間超過六個月的居留者，皆必須持有護照與進入該國核批的各類簽證。換言之，要能在一個國家無限期自由居住的非本國籍人士，取得他國的移民身分是最穩當的方式。姑且不論個人欲移居他國的理由，「跨國（境）婚姻」對企圖移入他國者而言，應算是最便捷的移民途徑，蓋其免去了繁瑣的移民申請程序，不僅沒資格審查的問題，還可以省去支付移民顧問公司的一大筆費用。然而，英美法系國家基於國家安全，以及公民身分乃非賣商品之理由，將假結婚真移民事件論以婚姻詐騙並科處刑罰，如美國，最高得處5年有期徒刑。有別於刑法上假借婚姻名義的詐欺取財罪、重婚罪；或民法上婚姻效力的認定等討論，我國移民法涉及類似事件的規範，則在以禁制婚姻的買賣交易、杜絕人口販運之目的，故而對於跨國（境）婚姻媒合並且要求或期約報酬者，明定有行政罰鍰。從而以觀，台、美就違反移民法的婚姻買賣事件而言，兩者立法理由、以及對待公民身分之態度明顯有別。是項觀點，值得比較法上的進一步研究參考。

Transnational Marriages of Contractual Remunerations Violating the Immigration Act

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Abstract

Having the status of citizenship, as a country's citizen, is conferred and guaranteed the freedom and rights of citizens by the country's Constitution except those which jeopardize social order and public interests. Foreigners wishing to enter another country to live, less than six months of stay, or more than six months of residence, must hold a passport in conformity with the required visas. In other words, the surest way able to live indefinitely in a nation free for non-domestic citizens is acquiring their immigration status. In spite of the reasons for migration, a transnational marriage is the most convenient way to move into another country, as it excludes the complicated application procedures, not only the eligibility issues, but also saving a large amount of fees paid to the immigration consultant company. However, under English legal system nations, i.e. the U.S., based on national security and the status of citizenship a non-selling product, marriage fraud is a serious crime, and participating in marriage fraud can result in imprisonment of up to five years for those involved. Apart from swindling money from the excuse of marriage or bigamy in the criminal law or marriage's legitimacy in the civil law, our Immigration Act aims to prevent marital deals and human trafficking in similar cases, hence in which the article 58(2) codified administrative fines for Transnational marriage agencies demanding fees or contractual remunerations. That is, concerning marriages violating the Immigration Act, the legislative purpose and the attitude towards citizenship are significantly different between Taiwan the United States. The perspectives are worthy of further research for reference in comparative laws.