

【法學英文】：模擬測驗練習第十回

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文章閱讀：本期「移民法禁止期約報酬之跨國婚姻」

【原文裁判書摘要】

U.S. v. ORTIZ-MENDEZ

No. 09-50849

634 F.3d 837 (2011)

UNITED STATES of America, Plaintiff-Appellee,

v.

Ederminda ORTIZ-MENDEZ, Defendant-Appellant.

United States Court of Appeals, Fifth Circuit.

February 28, 2011.

JERRY E. SMITH, Circuit Judge:

Ederminda Ortiz-Mendez appeals her conviction of marriage fraud and conspiracy to defraud the United States. Finding no error, we affirm.

I.

Ortiz-Mendez is a foreign national residing in the United States who is married to Antonio Rosales, a U.S. citizen. Rosales applied for an adjustment of status for Ortiz-Mendez so she could obtain permanent resident status. An immigration adjudication officer interviewed Ortiz-Mendez and Rosales in connection with the application. The officer became suspicious of their answers, so she referred the case to Customs Enforcement Special Agents to investigate whether the couple entered into the marriage for the purpose of evading immigration laws (i.e., whether this was a "sham marriage" in which Ortiz-Mendez was marrying a U.S. citizen for the purpose

of obtaining a green card).

Following the investigation, Ortiz-Mendez and Rosales were charged with marriage fraud and conspiracy to defraud the United States. Rosales pleaded guilty of marriage fraud. Ortiz-Mendez proceeded to trial, at which the government presented testimony from Rosales, who said that the marriage was a sham and that, in exchange for marrying her, he was promised a job with her boyfriend's company. Rosales testified that he and Ortiz-Mendez had never lived together as husband and wife, never slept in the same bed, and had never kissed, let alone have marital relations. Additional witnesses stated that the marriage was entered into for the purpose of evading immigration laws.

Ortiz-Mendez testified that she married Rosales because she loved him, not to evade immigration laws, and that she intended to stay with him for the rest of her life. She presented several witnesses in support of her defense.

Ortiz-Mendez objected to the proposed jury instructions and instead requested the following instruction:

That an alien married a citizen so that he could get a green card did not make the marriage a sham, although it was evidence that might support an inference of a sham marriage. An intent to obtain something other than or in addition to love and companionship from that life does not make a marriage a sham, for purposes of immigration laws. Rather, the sham arises from the intent not to establish a life together. If one spouse intended the marriage to be a sham when the ceremony took place, but the other intended it to be genuine, then one committed marriage fraud but not the other.

The district court rejected the proposed instruction and instead issued, in relevant part, the following instruction on the marriage fraud count (and a substantially similar instruction for the relevant part of the conspiracy-to-commit-fraud count):

Defendant is charged with knowingly entering into marriage for the purpose of evading the immigration laws. For you to find Defendant guilty of this crime, you must be convinced that the government has proven each of these things beyond a reasonable doubt: FIRST: that Defendant knowingly married a person who is a United States citizen; and SECOND: that she knowingly entered into the marriage for the purpose of evading a provision of the United States immigration laws.