



## Marine's widow, baby stuck in limbo

Old law says couple's marriage was never 'consummated' despite pregnancy

**The Associated Press**

updated 8:01 a.m. PT, Thurs., Sept. 17, 2009

MARYVILLE, Tennessee - Hotaru Ferschke wants to raise her 8-month-old son in his grandparents' Tennessee home, surrounded by photos and memories of the father he'll never meet: a Marine who died in combat a month after marrying her from thousands of miles away.

Sgt. Michael Ferschke was killed in Iraq in 2008, leaving his widow and infant son, both Japanese citizens, in immigration limbo: A 1950s legal standard meant to curb marriage fraud means U.S. authorities do not recognize the marriage, even though the military does.

Ferschke and his bride had been together in Japan for more than a year, and she was pregnant when he deployed. They married by signing their names on separate continents and did not have a chance to meet again in person after the wedding, which a 57-year-old immigration law requires for the union to be considered consummated.

"She is being denied because they are saying her marriage is not valid because it was not consummated — despite the fact that they have a child together," said Brent Renison, an immigration lawyer in Oregon who has advised the family.

Hotaru Ferschke and the baby, Michael "Mikey" Ferschke III, are staying for now on a temporary visa at the home of her parents-in-law, in the Smoky Mountains town of Maryville. Robin and Michael Ferschke Sr., who are fighting for their daughter-in-law to stay, have emblazoned their son's picture on everything from a blanket draped on the back of the couch to a waving banner on the fence outside.

### 'Mom, I am in love'

The 22-year-old Marine radio operator met the young Japanese woman at a party while he was stationed in Okinawa. Though neither knew much of the other's language, something clicked.

"He called me after they met and he goes, 'Mom, I am in love,'" Robin Ferschke said.

The couple were together about 13 months before he left for Iraq in April 2008. He had proposed and they were trying to conceive a baby before he deployed, Hotaru Ferschke said.

About two weeks after he left, she found she was pregnant. He wanted to get married quickly so she could start getting health benefits as the spouse of an American soldier, she said.

They agreed on a proxy wedding, which has a long history in the military and in some other cases where bride and groom can't be in the same place for a ceremony.

Procedures for a proxy marriage vary by country. Some take place by phone while others require a proxy to physically stand in for the absent partner during a ceremony.

Japan doesn't require a wedding ceremony, and couples getting married only have to complete sworn affidavits proving they are legally free to marry and register at a Japanese municipal government office, according to the U.S. Embassy. Hotaru Ferschke said she and her husband got their proxy marriage simply by completing the paperwork and their marriage was final on July 10, one month before he was shot during a house search.

The U.S. military recognizes proxy marriages for couples separated by war and helps facilitate them. The Marines are paying survivor benefits to Ferschke and her baby.

Proxy marriages are legal in at least four U.S. states. One of the most famous proxy weddings in recent history was that between Ekaterina Dmitriev in Texas to Russian cosmonaut Yuri Malenchenko in 2003 as he was floating in the international space station.

Pregnant and alone in Japan, Ferschke tried to apply for permanent residency in the United States and was denied.

### 'Personally distressing'

Kenneth Sherman, a field office director for U.S. Citizenship and Immigration Services who handled the Ferschke case,

declined to answer questions from The Associated Press about it. In a letter to the widow, Sherman said he believed that U.S. law required the denial, although he found the situation "personally distressing."

"You have already sacrificed so much for your country and your soon-to-be born son has lost a father," Sherman wrote.

Renison, who advocates for foreign spouses of American citizens, said the widow ran into a complicated and confusing set of immigration rules regarding marriage to foreigners.

The Immigration & Nationality Act says that, for the purposes of immigration law, the definition of spouse does not include a "wife or husband by reason of any marriage ceremony where the contracting parties thereto are not physically present in the presence of each other, unless the marriage shall have been consummated."

### **Law designed to curb marriage fraud**

A number of immigration laws passed in the 1940s made it easier for brides of American GIs to immigrate, but a consummation requirement passed in 1952 for proxy weddings was designed to curb marriage fraud.

"It's supposed to prevent people from marrying somebody they are not really intending to have a life with. The law essentially requires them to have met after the marriage," said Margaret Stock, a lawyer who assists military families through the American Immigration Lawyers Association.

"What's odd about this case is that it appears the consummation part of the law was already met, but it was prior to the marriage."

There's no mention of consummation prior to the wedding in the statute, which Renison considers outdated and in need of reform.

"Well, 1952 was a different time," Renison said. "And back then, I'm sure they considered having sexual intercourse out of wedlock to be just fornication."

Historian Nancy Cott, who wrote a book called "Public Vows: A History of Marriage and the Nation," said proxy marriages have been commonly used by Japanese and Korean immigrants to America. But Cott said U.S. immigration authorities have never liked this type of marriage "because it is inconsistent with Western Christian ideas of how marriage takes place."

The Ferschke family is hoping a private bill introduced by U.S. Rep. John Duncan this summer will allow Hotaru to stay in the U.S., but each setback has become a reminder of their loss. A private bill affects the case of just one person, rather than changing the law as a whole.

"We still have a hard time accepting this," Robin Ferschke said. "We're trying to go forward, celebrate his life, but then every time we turn around we get a constant reminder."

*Copyright 2009 The Associated Press. All rights reserved. This material may not be published, broadcast, rewritten or redistributed.*

URL: [http://www.msnbc.msn.com/id/32891829/ns/us\\_news-life/](http://www.msnbc.msn.com/id/32891829/ns/us_news-life/)

[MSN Privacy](#) . [Legal](#)

© 2009 MSNBC.com