

Immigrant sponsorship and spousal support obligations

By Cara L. Boroda

After four years of marriage, Max and Anna decide to divorce, and each hire a lawyer to represent their respective interests in the divorce proceeding. Because this is a short-term marriage, the parties agree to a mutual waiver of spousal support. However, because Max signed the affidavit of support I-864 form in connection with his sponsoring Anna for a green card, the waiver is meaningless. Why? Because with the I-864 affidavit, Max entered into an agreement with Anna and the federal government promising to support Anna for 10 years.

Simply put, the I-864 affidavit outlives a marriage that lasts less than 10 years; and this obligation is not terminated by virtue of a divorce, regardless of what the parties agree. An I-864 affidavit is a legally enforceable contract between the sponsor and the sponsored immigrant. *Shumye v. Felleke*, 555 F.Supp.2d 1020, 1023 (N.D. Cal. 2008). "By signing a Form I-864 the 'sponsor agrees to provide support to maintain the sponsored alien at an annual income that is not less than 125 percent of the Federal poverty line during the period in which the affidavit is enforceable," which is a

period of 10 years. 8 U.S.C. Section 1183a(1)(A). Federal courts have consistently found that a I-864 affidavit constitutes a legally binding and enforceable contract between a sponsor and the sponsored immigrant. Additionally, public providers of benefits to indigents are designated as third-party beneficiaries of the affidavit-contract and are expressly authorized by the Immigration and Nationality Act to sue a sponsor who defaults on his or her support obligation. 8 U.S.C. Section 1183a(a)(1)(B).

come self-supporting, and urged the court to impute to her income from a full-time, minimum wage job. In response to her husband's motion, the wife asked the court to continue support because her husband had signed the I-864 affidavit; thus, by virtue of this contract, he was obligated to continue to support his wife for 10 years. The trial court granted the husband's request, terminated support and told the wife to file a federal case — which she did, with a timely appeal.

that a sponsored immigrant seeking to enforce the I-864 affidavit has no duty to mitigate damages, meaning they have no duty to make efforts to find work before seeking to enforce the I-864 affidavit. While conditions do exist to excuse the obligation to support the sponsored immigrant pursuant to the I-864 affidavit, the list of excusing conditions does not include an immigrant's failure to seek work or otherwise mitigate their damages. Thus, *Kumar* opines that it was error to deny the wife's contract claim on the ground that she had failed to use her best efforts to mitigate damages by seeking and obtaining a job.

Kumar is an interesting case because it shows just how powerful the force of the I-864 affidavit is. The I-864 affidavit can survive a divorce and can survive a waiver of spousal support. Further, the I-864 affidavit is strong enough that it protects the immigrant from having to make efforts to seek work because, regardless of any such efforts, it is up to the sponsor to support the immigrant during the specific statutory time period. The I-864 affidavit is an enforceable contract, and one should carefully consider its weight before signing on the dotted line. As *Kumar* shows, a signer may be able to terminate marital status, but cannot terminate the contractual support obligation pursuant to the I-864 affidavit.

Cara L. Boroda is an attorney at *Van Oorschot Law Group, PC*. She has been practicing family law exclusively since 2010 and can be contacted at (310) 820-3414 or through www.mvolaw.com.

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In *In re Marriage of Kumar*, 2017 DJDAR 7317 (July 28, 2017), the 1st District Court of Appeal, Division 2, ruled that an immigrant spouse has standing to enforce the I-864 affidavit in state court and has no duty to mitigate damages. This is a case of first impression in California.

The wife, an immigrant spouse, was sponsored by her husband who signed the I-864 affidavit in connection with his petition to sponsor her for an immigration visa. During a tumultuous divorce proceeding, the court granted the wife's request for temporary spousal support payable by her husband, and also gave the wife a *Gavron* warning, which required her to make reasonable and good faith efforts to work in the U.S.

Several months later, the husband filed a motion to terminate his wife's spousal support, asserted that she had made no efforts to be-

The *Kumar* decision provides that the trial court got it wrong on several levels. First, *Kumar* states that a sponsored immigrant has independent standing to enforce the obligations of the I-864 affidavit against her sponsor and may bring such an enforcement in state or federal court. Thus, the wife had every right to enforce the I-864 affidavit in her divorce proceeding in state court. Further, *Kumar* provides that the right of support conferred by federal law, i.e. the I-864 affidavit, exists apart from whatever rights [a sponsored immigrant] might or might not have under [state] divorce law. *Erler v. Erler*, 824 F.3d 1173, 1177 (9th Cir. 2016). Thus, the court should have considered the existence of the signed I-864 affidavit when it was considering the husband's motion to terminate support.

The *Kumar* decision also provides



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