

IMMIGRATION AND DIVORCE

By K. Dean Kantaras



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ALIMONY OR SPOUSAL SUPPORT is usually one of the most controversial issues in a divorce. A party's need for support and the ability to pay support by the other party are the two issues that a judge normally considers. Elements such as the length of the marriage can be a critical element in the court's decision.

However, there is one scenario where ability to pay and length of the marriage are not considered at all.

This situation involves the sponsor of a person for entry into the United States who has been required by the U.S. Immigration and Naturalization Service to sign an Affidavit of Support Form I-864. When that form is signed, the sponsor agrees to support the immigrant at the level of 125% of the federal poverty level. This support obligation can go on for years or even become permanent, since the intent is to prevent an immigrant from becoming dependent on public support and welfare. This support obligation can be enforced in both federal courts and state courts, as the federal statute specifically provides for such. When a person signs this affidavit, they submit themselves to the jurisdiction of either a federal or a state court, with the choice of which court belonging to the immigrant involved.

Some feel that this law is fair and should be enforced, no matter what. However, circumstances can be argued, such as in California, where a Federal Court ruled on a case where a couple who married in January 1999, separated in October 1999, and then filed for divorce in 2003. At the time of the divorce case, the husband agreed to pay the wife \$49,000 as a settlement. The settlement referenced the parties' community property rights (Florida is not a community property state, even though many people believe it is.) The agreement, however, did not resolve the support issue specifically. Then, in 2005, the wife filed suit to enforce her right to

support, under Form I-864, and also for damages (which is specifically permitted by the statute if damage can be proven).

Since Form I-864 is a legally enforceable contract between the sponsor, the U.S. Government and the immigrant, the federal court ruled that the terms of Form I-864 provide for an appropriate measure of damages that would put the immigrant in as good a position as she would have been if the contract had never been signed. The court also ruled that the sponsor may be liable for the immigrant's attorney's fees and costs.

Under the law, the I-864 obligations terminate only under one of five circumstances: (1) the sponsor dies, (2) the immigrant dies, (3) the immigrant becomes a U.S. citizen, (4) the immigrant permanently leaves the U.S., or (5) the immigrant earns 40 qualifying quarters of work (10 years).

It is important to understand that divorce does not terminate the support obligations, as the I-864 support obligation is totally independent from the divorce case

except that any support ordered in a divorce will be used to determine the immigrant's income for poverty level calculations.

In another federal court case, in Maryland in 2009, the affidavit of support was signed after the parties were married. It was signed in May, 2003. The wife filed for divorce in 2006. The defense claimed that the wife failed to do everything she could to find a job. The court said the wife did not have to apply for every available job, but only had to make reasonable efforts to find work.

A Florida Federal District Court (our district) considered a case in 2006, where the affidavit was signed after the parties married. When they divorced in 2001, no alimony was awarded to the spouse. The court ruled that the sponsor's ability to pay was irrelevant to his obligation under Form I-864 and that the immigrant was not required to work to earn 40 qualifying quarters. Therefore the obligation for support under the affidavit would be enforced.

Sponsoring an immigrant is a wonderful thing, but it should not be taken lightly, as it is a legally binding obligation ■■■

EDITOR'S NOTE: K. Dean Kantaras is an attorney limiting his practice to family law matters, including custody, related appeals and immigration. He is a member of the bar of the Supreme Court of the United States, The Florida Bar, and Clearwater Bar Association Family Law Section. Mr. Kantaras is Board Certified by The Florida Bar in Marital and Family Law. His offices are located at 3531 Palm Harbor Boulevard in Palm Harbor, 1014 U.S. Highway 19 North, Suite 110 in Holiday and 1930 East Bay Drive in Largo. He can be reached at (727) 781-0000, fax: (727) 938-3939, and emailed at kdk@kalawgroup.com.