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43 FLR 1365
Alimony & Maintenance
Man Ducks Alimony But Can't Escape Federal Support Duty

By Julianne Tobin Wojay

A Fijian wife's contractual right to support under the federal affidavit filed by her husband in connection with her immigration to the U.S. is enforceable in their state divorce action, the California Court of Appeal, First District, decided (*In re Kumar*, 2017 BL 263105, Cal. Ct. App., 1st Dist., No. A145181, 7/28/17).

That support obligation isn't impacted by the denial of her request for alimony, the appeals court emphasized.

The issues here "appear to be matters of first impression in California," Justice Marla J. Miller added, writing for the unanimous panel.

10-Year Support Contract

When a U.S. citizen sponsors someone for an immigration visa, they are required to submit a Form I-864 affidavit to the federal government. The affidavit is a pledge to support the immigrant at an income of at least 125 percent of the federal poverty guidelines for 10 years.

The affidavit is a legally binding and enforceable contract between the sponsor and the immigrant, and is not terminated by their divorce, Miller said.

Because federal law allows enforcement in state or federal court, the contract is enforceable in family law proceedings, the appeals court said.

Moreover, an immigrant seeking to enforce the affidavit isn't required to "mitigate the damages" by obtaining employment, it said, citing the federal Seventh Circuit's ruling in *Liu v. Mund*.

Sent Her Back to Fiji

The couple here entered into an arranged marriage in the wife's native Fiji.

The American husband sponsored her for an immigration visa leading to permanent residency. He also signed a Form I-864.

The wife arrived in the U.S. a few months later. She said the husband became abusive and "tricked" her into going back to Fiji.

She returned to California on her own, moved into a homeless shelter, and obtained financial assistance from the state. The husband filed for divorce.

The divorce court ordered him to pay \$675 in monthly temporary alimony while the action was pending. It also granted the wife a domestic violence restraining order.

However, it rejected her later request for permanent alimony, citing the short duration of the marriage and her ability to work.

The court also denied her request for enforcement of the husband's \$1,196 per month support duty under his I-864 affidavit, telling her to "file a federal case."

Miller was joined by Justices J. Anthony Kline and Theresa M. Stewart.

The wife was represented by Neel Chatterjee and Edwin Steussy, of Orrick Herrington & Sutcliffe, Los Angeles, Erin C. Smith, Jennafer D. Wagner, and Shuray Ghorishi, of the Family Violence Appellate Project, and Protima Pandey of Bay Area Legal Aid. The husband was represented by Margaret S. Tillinghast, Daly City, Cal.

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Snapshot

- Immigrant wife can enforce his duty of support under federal contract
- She is not obligated to soften the blow by finding a job

For More Information

Full text at

http://www.bloomberglaw.com/public/document/In_re_Marriage_of_Kumar_13_CalApp5th_1072_App_1st_Dist_2017_Court.

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