



CASE ALERT

Immigrants can now enforce financial support obligations in family court

On July 28, Family Violence Appellate Project and Bay Area Legal Aid won a landmark California case that may help some of your clients. Thanks to co-counsel Orrick, Herrington & Sutcliffe LLP.

Summary

In the first ever ruling of this kind in California, the California appellate court in *In re Marriage of Kumar* (2017, 13 Cal.App.5th 1072) held that a domestic violence survivor who was brought to the U.S. through an I-864 Affidavit of Support may seek to enforce in family court the financial support obligations set forth in the I-864 Affidavit.

As part of sponsoring an immigrant to come to the U.S., the federal government requires a sponsor to sign an I-864 Affidavit, wherein the sponsor agrees to provide the financial support necessary to maintain the sponsored immigrant at an income level of at least 125% of the federal poverty limit for 10 years or 40 working quarters. The I-864 Affidavit is an enforceable contract. In this case, husband signed an I-864 Affidavit to bring his wife to the United States. The domestic violence began when wife moved to the United States, and husband was arrested as a result of the abuse. Husband filed to end the marriage and terminate spousal support, despite his promise to financially support wife through the Affidavit. In addition to asserting that financial support should not be terminated due to California's Family Code statutes on spousal support, wife also claimed breach of contract with respect to the I-864 Affidavit.

The family court terminated wife's support and refused to enforce the I-864 Affidavit, finding that the I-864 Affidavit was not enforceable in family court, and even if it could be enforced in family court, wife had a duty to use her best efforts to find a job. The appellate court held that the trial court erred in terminating wife's financial support, because: 1) the I-864 Affidavit is enforceable in California family courts, because family courts are courts of general jurisdiction that can hear breach of contract claims; and 2) an immigrant spouse seeking to enforce the support obligation of an I-864 Affidavit has no duty to seek employment to mitigate damages (in this case, the husband's duty to support the wife).

How could this case help your clients?

If you are working with immigrant clients who were sponsored through an I-864 Affidavit, then this case should make it easier for them to obtain financial support, especially if they feel trapped in an abusive relationship due to their financial situation or limited income options. It helps them avoid the very expensive and complex process of filing a separate lawsuit to enforce the support obligation in federal or state court, because they can now assert a breach of contract claim in their family court cases, including Domestic Violence Prevention Act (DVPA) actions. As such, it may be good practice to start asking your clients if they are a beneficiary of an I-864 Affidavit.

For questions or clarifications, contact Family Violence Appellate Project: staff@fvaplaw.org or (510) 858-7358. Thank you!