



Kumar vs. Kumar Success in Court August 2017

NIWAP would like to share a recent victory in the California Court of Appeals regarding affidavits of support. The decision of the California Court of Appeals concluded that:

- Affidavits of support are enforceable in family court as part of a divorce proceeding;
- A separate civil contract case is not required;
- The immigrant spouse cannot be ordered to seek employment seeing as they have no duty to mitigate;
- Enforcement of the affidavit of support is independent of spousal support laws;
- Courts cannot obligate the victim to seek employment (duty to mitigate) in order to receive the support payments promised in the affidavit of support.

Under U.S. immigration laws, citizen spouses are required to sign an affidavit of support, which is a contract with the Department of Homeland Security in which the citizen spouse is obligated to support their immigrant spouse at an income of at least 125 percent of the federal poverty line for 10 years.

The California Appeals Court ruled that there is no duty to mitigate in an affidavit of support case because the citizen spouse promised the U.S. government that they would support the immigrant spouse. This means that the spouse has no obligation to seek employment in order to receive support payments based on the affidavit of support. This ruling is consistent with the obligations imposed upon the citizen spouse under federal laws and regulations governing affidavits of support.

This case will be helpful for immigrant victims of spouse abuse for whom obligations to find work could be particularly difficult due to the trauma of the abuse they have suffered.

The California Court of Appeals decision in Kumar vs. Kumar is available [here](#).

The National Immigrant Women's Advocacy Project led an effort to file an amicus brief in this case. The amicus brief discussed the following issues:

- The sponsored immigrant spouse must be permitted to enforce the I-864 affidavit of support in family court divorce proceedings as a contract;
- Common law and state spousal support law duties to mitigate do not apply to affidavit of support enforcement actions.
- The history and purpose of the affidavit of support and the particular importance of allowing its enforcement in divorce cases and not requiring a separate civil contract enforcement case in cases of battered immigrant spouses.

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- The legislative history of the statute and its relationship to the Violence Against Women Act.
- The 1996 immigration laws both created the I-864 affidavit of support and gave access to public benefits to abused immigrant spouses who had filed VAWA self-petitions. In addition, that same law exempted self-petitioners from the following requirements that are imposed on non-abused immigrant spouses:
 - The affidavit of support and
 - Public benefits deeming rules. This exemption ensures that victims can apply for public benefits without the assumption that the victim has full access to the income and resources of their abusive spouse.

The NIWAP brief can be found [here](#).

We want to thank the law firms of Crowell and Moring and Orrick for their great work on this case, and the Family Violence Appellate Project and Bay Area Legal Aid for their successful efforts on behalf of the victim.

NIWAP'S Affidavits of Support and Enforceability Bench Card can be found [here](#)