

The Affidavit of Support Creates a Legally Enforceable Contract by the Sponsored Foreign National: Efforts to Collect Damages as Support Obligations Against Divorced Spouses

By John Patrick Pratt and Ira J. Kurzban



Introduction

Federal and state courts have recently been called on to address issues arising in the context of actions commenced by divorced foreign national spouses who seek enforcement of the affidavit of support requirements of the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1182(a)(4) and 1183a and §§ 212(a)(4) and 213A against their spouses who are U.S. citizens. What is little known about these enforcement actions—and the statute and regulations pertaining to the affidavit of support (Form I-864)—is that the U.S. citizen spouse may be liable for support for life. Divorce and/or premarital agreements do not terminate the affidavit of support obligations.

Section 213A of the INA establishes the legal obligations and enforceability of the affidavit of support that must be submitted in family-based immigrant visa petitions and, in certain circumstances, some employment-based immigrant visa petitions.¹ When a U.S. citizen marries a foreign national, the U.S. citizen must sponsor his or her spouse as a condition precedent to immigration into, and becoming a lawful permanent resident of, the United States. The U.S. citizen must execute the affidavit of support as a requirement for sponsorship.

The purpose of this article is to analyze the statutory and regulatory framework, as well as to discuss precedent that analyzes the legal obligations and enforceability of the affidavit of support by foreign nationals against the sponsor(s).² The scope of this article is restricted to analyzing the legal enforceability of the affidavit of support provisions relating to maintenance of the foreign national by the sponsor and joint sponsor, if applicable, at an annual income that is not less than 125 percent of the federal poverty guidelines. This article, therefore, will not discuss or analyze the legal enforceability of the affidavit of support in cases relating to receipt of means-tested public benefits by the foreign national.

Statutory and Regulatory Framework

The legal authorities pertaining to the legal effect of the affidavit of support requirements are statutory and regulatory. The statutory sections are INA § 212(a)(4) (Public Charge) and § 213A (Affidavit of Support). The pertinent regulatory sections are set forth at 8 C.F.R. §§ 213a.1 through 213a.5. It is important to note that, pursu-

ant to 8 C.F.R. § 103.2(a)(1), the instructions to any and all immigration forms—including Forms I-864, I-864A, I-864EZ, and I-864W—are incorporated into the particular section of the regulations applicable to affidavit of support analysis. The instructions and Form I-864, therefore, must also be carefully consulted because they carry the force of enacted regulations. In addition, the Department of State's Foreign Affairs Manual (FAM), which provides the legal requirements for immigration consular adjudication, must also be consulted. The section of the FAM relating to the affidavit of support requirements is found at 9 FAM § 40.41 and provides that, in family-based immigrant petitions, INA § 212(a)(4) clearly establishes that to overcome the "public charge" ground of inadmissibility, the petitioner (on Form I-130, Petition for Alien Relative) must execute and submit a legally enforceable affidavit of support on Form I-864.³ The sponsor must agree in the affidavit of support to "provide support and maintain the sponsored alien at an annual income that is not less than 125 percent of the federal poverty guidelines during the period in which the affidavit of support is enforceable."⁴

The affidavit of support can be "legally enforceable against the sponsor by the sponsored alien."⁵ Jurisdiction to enforce the affidavit of support lies in "any appropriate court" (*i.e.*, state or federal court) in actions brought by the sponsored alien "with respect to financial support."⁶ The possible available remedies include, but are not limited to, specific performance of the contract (*i.e.*, payment of maintenance at 125 percent of the federal poverty guidelines), payment of legal fees and other costs of collection, and corresponding remedies under state law.⁷

Pursuant to the statute, the affidavit of support remains in effect and is not terminated until the sponsored alien either is naturalized or is credited with or earns 40 qualifying quarters of employment, as defined under Social Security law.⁸ The regulations and instructions for Form I-864, however, also allow for the termination of the affidavit of support maintenance obligations if the sponsor or sponsored immigrant dies or the sponsored alien abandons lawful permanent resident status and departs the United States.⁹ In addition, 8 C.F.R. § 213a.2(f)(1) and (2) allow the sponsor, substitute sponsor, joint sponsor, household member, or

intending immigrant to withdraw or “disavow” Form I-864 or I-864A in writing *prior to* the issuance of an immigrant visa or the decision on an adjustment of status application. It is critical to note that divorce or the legal dissolution of the marriage between the sponsor and the sponsored alien does not terminate the affidavit of support requirements.¹⁰ In fact, divorce eliminates the ability of the parties to combine Social Security quarters earned during the marriage and terminate the contractual enforceability of the affidavit of support in that manner.¹¹ The affidavit of support, therefore, essentially creates a disincentive for sponsored aliens to become naturalized and work after divorcing the U.S. citizen spouse, because doing so eliminates or restricts the sponsored immigrant’s ability to receive guaranteed maintenance from the sponsor at a level not less than 125 percent of the federal poverty guidelines.

The legislative history behind INA § 213A confirms that the affidavit of support creates a binding contract between the sponsoring petitioner and the federal government, with the intended immigrant as the third-party beneficiary.¹² In the legislative history relating to § 551 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which enacted INA § 213A, the affidavit of support requirement was described as “creat[ing] a new, legally binding affidavit of support in order to seek reimbursement from sponsors.”¹³ It appears, therefore, that it was the intention of the drafters of INA § 213A that “the affidavit of support be a legally binding contract between an alien’s sponsor, the sponsored alien, and the government.”¹⁴ The provision was designed “to encourage immigrants to be self-reliant in accordance with national immigration policy” or be supported by the sponsor of such immigrant.¹⁵

The pertinent regulations also establish that execution of Form I-864 creates a contract between the sponsor and the federal government for the benefit of the sponsored immigrant, who may seek enforcement of the sponsor’s obligations through an appropriate civil action.¹⁶ Moreover, the Form I-864 contains specific disclosures. Form I-864, Part 8 (*i.e.*, Form I-864 (Rev. 10/18/07) pp. 6 and 7) establishes that, by signing the affidavit of support, the sponsor agrees to assume certain specific obligations under the INA and other federal laws. Moreover, Form I-864, Part 8 specifically establishes that if the sponsor signs a Form I-864 on behalf of a sponsored immigrant and the sponsored immigrant submits Form I-864 to the U.S. government in conjunction with consular process or adjustment of status, those actions create a contract between the sponsor and the U.S. government. Form I-864, Part 8 establishes that the sponsored immigrant’s acquisition of lawful permanent resident status is the “consideration” for the contract. Form I-864, Part 8 also establishes that the sponsor must provide the sponsored immigrant any support necessary to maintain him or her at an income that is at least 125 percent of the federal poverty guidelines until the affidavit of support terminates under one of the conditions previously discussed. Finally, Form I-864, Part 8 contains the following unequivocal provisions: (1) “If you [the sponsor] do not provide sufficient support to the person who becomes a permanent resident based on Form I-864 that you signed, that person may sue

you for this support” and (2) “I [the sponsor] agree to submit to the personal jurisdiction of any Federal or State court that has subject matter jurisdiction of a lawsuit against me to enforce my obligations under this Form I-864.”

Legal Actions Enforcing the Affidavit of Support Requirements

Efforts on the part of divorced spouses to enforce the support payment requirements under Form I-864 have been successful in the federal courts. As previously noted, however, the INA expressly contemplates concurrent jurisdiction of state and federal courts. Plaintiffs have utilized this language to bring claims for support in both state and federal courts.¹⁷

Jurisdiction

In *Davis v. Davis*, 2004 WL 2924344—the original case to explore the issue of jurisdiction—the plaintiff was Svetlana Davis, a Ukrainian national. She was seeking specific performance of the affidavit of support’s maintenance requirements against her husband, the sponsor of the affidavit of support. The Ohio Court of Appeals in *Davis* determined that the affidavit of support executed by her husband was part of the record in divorce proceedings and that his spouse had standing to enforce affidavit of support maintenance requirements in those proceedings. The *Davis* court also determined that a state court presiding over divorce proceedings had jurisdiction to enforce an affidavit of support executed by the husband for immigration purposes. Finally, the *Davis* court specifically held that, pursuant to INA § 213A and the pertinent regulations, the specific performance of the maintenance requirements of the affidavit of support may be enforced in any federal or state court.

Defenses to Enforcement: What Constitutes Mitigation or Set-offs?

Even though a finding of basic maintenance support liability on the part of the sponsor under Form I-864 is supported by the legislative history, the governing statute, and the attendant regulations what exactly constitutes mitigation and/or set-offs and whether any further defenses may exist are open questions. In *Stump v. Stump*, 2005 WL 2757329, the plaintiff wife was a Russian citizen who was sponsored by her U.S. citizen husband for an immigrant visa. The defendant husband signed the affidavit of support and agreed to provide his wife with support necessary to maintain her at an income in the amount of at least 125 percent of the federal poverty guidelines. According to the U.S. District Court for the Northern District of Indiana, the defendant husband “made this promise as consideration for the plaintiff’s application not being denied on the grounds that she was an immigrant likely to become a public charge.” The *Stump* court granted summary judgment on liability in favor of the plaintiff wife. With respect to damages, the court found that, because the plaintiff wife was now divorced, her household size would be one person, as opposed to three, which was the original size of the household at the inception of the marriage. The reduced household size lessened the amount of damages to which Mrs. Stump would otherwise be entitled, because the federal poverty guidelines are dependent on the number of persons in the household. With

respect to the contract defenses of mitigation and set-off, the court found that such issues were properly before the court. Although there is no body of federal common law specifically addressing those issues, the court noted that the general duty to mitigate damages is a “basic tenet” of contract law. Applying those principles, the court found that any “funds the [p]laintiff received after her separation should be subtracted from the amount the [d]efendant must provide to ‘maintain’ the [p]laintiff at 125 [percent] of the poverty level.” The court further found that the plaintiff had made “reasonable efforts” to obtain employment and be self-sufficient.

In *Ainsworth v. Ainsworth*, 2004 WL 5219036, and *Ainsworth v. Ainsworth*, 2004 WL 5219037, the plaintiff sought summary judgment of her claim of support under an affidavit of support. The Louisiana Court of Appeals held that a sponsored immigrant is not entitled to continuing and lifetime payments from the sponsor if he or she has either sufficient earnings or an earning capability of at least 125 percent of the federal poverty guidelines. In addition, the foreign national’s assets may be used to determine the amount of support liability, but those assets must be located in the United States and must be listed and described in the affidavit of support if they are to be used to assist in support of the sponsored immigrant. The *Ainsworth* court determined that, because Mrs. Ainsworth’s assets were not listed in the affidavit of support, they could not serve as set-offs. In *Shumye v. Felleke*, 555 F. Supp. 2d 1020 (N.D. Cal. 2008), the court recognized certain set-offs and held that the value of “affordable housing subsidies” and student grants, such as Pell grants, constituted “income” for purposes of reducing the damages available to a plaintiff under the affidavit of support. In *Naik v. Naik*, 944 A.2d 713 (N.J. Super. 2008), the court held that the affidavit of support creates a legally enforceable contract but recognized that there is a set-off for spousal support, child support, and equitable distribution. Furthermore, the *Naik* court determined that the calculation of damages is based on whether the third-party beneficiary had income that *annually* reached 125 percent of the poverty guidelines. In *Cheshire v. Cheshire*, 2006 WL 1208010, the U.S. District Court for the Middle District of Florida held that the “sponsor’s financial obligation under the affidavit of support should be reduced by the amount of any income or benefits the sponsored immigrant receives from other sources.”

An issue that remains is what constitutes “reasonable efforts” to mitigate one’s damages under the affidavit of support, which necessarily requires a fact-based inquiry dependent upon a variety of factors, such as the age and health, employment history, and level of education of the sponsored spouse. For example, in *Yoonis v. Farooqui*, 597 F. Supp. 2d 552 (D. Md. 2009), the court held that there is an obligation to make reasonable efforts to find employment and to mitigate damages. In that case, “occasional” cash gifts received by the defendant’s former wife from friends and members of her mosque following the parties’ separation were held to be de minimis and, therefore, did *not* reduce the former husband’s obligation to his wife. Moreover, the husband’s child support obligation also did *not* reduce his support obligation to his former wife because, according to the *Yoonis* court, the purpose of child support was not to

benefit the wife but, rather, to benefit the child and ensure that the child enjoyed the same standard of living as if the parents had remained together. With respect to efforts on the part of the wife to find employment, the court held that her efforts were sufficient, because “she need not apply for every available job in order to mitigate her losses; she need only make reasonable efforts.”

Other Contract Defenses: Fraud at Inception of Marriage and Unclean Hands

Although there are no reported cases in which a defendant has successfully contested his or her liability under Form I-864, fraud can be an available defense. In the event the sponsoring U.S. citizen was defrauded into marrying the intending immigrant, a potential defendant should, under the law in many states, be counseled to seek an annulment based upon fraud, rather than a divorce. For example, in Florida, the existence of an annulment expressly based upon the fraud committed by the intending immigrant should present impediments to recovery in any subsequent action under the affidavit of support.¹⁸ Furthermore, under the doctrine of “unclean hands,” which generally provides that a party seeking redress pursuant to an affidavit of support must not have done any illegal or unlawful act, it could be argued that a plaintiff should be equitably estopped from claiming damages under Form I-864, which was signed by the former spouse defendant as the result of the fraud.¹⁹ Additionally, applying the doctrine of “unclean hands,” the intending immigrant should not be entitled to recover any damages under Form I-864 for the years in which he or she willfully failed to pay and/or avoided paying duly owed taxes to purposely avoid accumulating qualifying Social Security employment quarters.²⁰

Other Possible Defenses and Unconscionability

Other possible defenses that may be raised against a claim for support obligations under Form I-864 include res judicata, collateral estoppel, due process, infringement on marital and familial rights, termination of right to enforce affidavit of support, collateral source set-off, fraud, and other contract-based defenses, such as lack of consideration, void for vagueness or lack of definite terms, illusory contract, duress, and unconscionability. Of course, in federal court as in many states, most or all of those defenses will be affirmative defenses and, unless they are raised in the answer or first responsive pleading, pursuant to Fed. R. Civ. P. 12(b), they will be waived.

The most interesting of the listed affirmative defenses, in addition to fraud, is unconscionability. For example, Florida courts have defined unconscionability as a contract or clause

“where it turns out that one side or the other is to be penalized by the *enforcement* of [its] terms [such] that no decent, fairminded person would view the ensuing result without being possessed of a profound sense of injustice, that equity will deny the use of its good offices in the enforcement of such unconscionability.”²¹ ... This principle of unconscionability is ... an important, if infrequently used, safety valve in our law of

contracts because “courts should be enabled to refuse enforcement of a contract ... when such enforcement would not be in keeping with the basic function of any court—the administration of justice.”²²

Although the doctrine of unconscionability has yet to be applied in the context of Form I-864, the form may be found unconscionable under certain specific circumstances where its enforcement would result in injustice or gross unfairness. It may be unreasonable, for example, to impose an obligation to support if the immigrant has failed to report his or her income to the government by filing taxes as required by law, thus obviating the occurrence of one of the conditions precedent to termination of the sponsor's obligations under Form I-864. In addition, unconscionability may also be shown where the beneficiary has frustrated the purpose of the contract by violating not only federal tax laws but also immigration laws by, for example, failing to file appropriate forms and providing evidence to maintain his or her status or failing to report for court hearings and/or other immigration-related appointments.²³

Conclusion

The authorities cited in this article make it critical that practitioners fully explain all the potential legal obligations of a sponsor—and joint sponsor, if applicable—relating to executing an affidavit of support. These obligations must be disclosed in writing on a form that the sponsor(s) sign and of which the sponsor(s) acknowledge receipt, thereby expressing an understanding of the affidavit of support obligations and grounds for termination. Furthermore, a disclosure of conflicts of interests must be given in writing, along with the opportunity to seek other counsel if necessary. Given the potential for liability for incomplete disclosure and due to potential conflicts of interests in representing both the sponsor and the sponsored immigrant, these disclosures should also include language explaining the ethical issues and the practitioner's responsibilities.

There will be increasing state and federal litigation surrounding the obligations of a sponsor under the affidavit of support. Due to the lack of reported case law, there are many unresolved issues surrounding application of Form I-864 to circumstances involving divorced spouses or other beneficiaries of family petitions, such as parents and children. Finally, based on the existing case law, the statute, and the pertinent regulations relating to the affidavit of support requirements, the sponsor's obligations may not be altered by an agreement between the sponsor and the immigrant. **TFL**

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Endnotes

¹Form I-864 is required in all family-based immigration adjustment cases and in a limited number of employment-based cases. Specifically, it is required in any residence applications involving immediate relatives including fiancé(e)s and orphans, unless the orphan becomes a citizen upon adjustment of status. In the context of employment-based cases, Form I-864 is required if the petitioning employer is a relative of the alien and is a U.S. citizen or lawful permanent resident; the form is also required when the relative of the alien has a significant ownership interest (five percent or more) in the for-profit petitioning entity and is a U.S. citizen or a lawful permanent resident. Michael Aytes, USCIS Memorandum, *Consolidation of Policy Regarding USCIS Form I-864, Affidavit of Support*, (AFM Update AD06-20) HQRP 70/21.1.13 (June 27, 2006). If, for example, a person enters the United States under a K-1 (fiancé(e)) visa, the petitioner would be obligated to fill out Form I-134, not Form I-864. If he or she then decides not to marry the person, there would be no liability under the affidavit of support (I-134), so long as the immigrant does not adjust his or her status through marriage to the fiancé(e), in which case there would be an obligation to execute Form I-864.

²In preparing this article, the authors relied on Charles Wheeler, *Alien vs. Sponsor: Legal Enforceability of the Affidavit of Support*, 10 BENDER'S IMMIGRATION BULL., 1791-1796 (Dec. 1, 2005); Geoffrey A. Hoffman, *Form I-864 (Affidavit of Support) and Efforts to Collect Damages as Support Obligations Against Divorced Spouses: What Practitioners Need to Know!*, 83 FLA. B.J. 53 (Oct. 2009); and Ira J. Kurzban, IMMIGRATION LAW SOURCEBOOK, (12th ed., 2010).

³INA §§ 212(a)(4)(C)(ii) and (D), 213A(a)(1).

⁴INA § 213A(a)(1)(A).

⁵INA § 213A(a)(1)(B).

⁶INA § 213A(e).

⁷INA § 213A(c).

⁸INA §§ 213A(a)(2) and (3).

⁹8 C.F.R. § 213a.2(e); Form I-864, Instructions, p. 3.

¹⁰Form I-864, Instructions, p. 3.

¹¹INA § 213A(a)(3)(B)(ii).

¹²See S. REP. NO. 249 (1996).

¹³H.R. CONF. REP. NO. 104-828 (1996).

¹⁴*Id.*

¹⁵*Id.*

¹⁶8 C.F.R. § 213a.2(d); Form I-864, p. 6.

¹⁷For an example of a Florida divorce proceeding involving a claim under Form I-864, see *Iannuzzelli v. Lovett*, 981 So. 2d 557 (Fla. App. 2008). The authors' firm represented the defendant in this case.

¹⁸Under Florida law, an annulment, in contrast to dissolution of marriage, renders the marriage void ab initio. See, e.g., *Young v. Young*, 97 So. 2d 470 (Fla. 1957); *Kuehmsted v. Turnwall*, 138 So. 775 (Fla. 1932).

¹⁹See *Seismograph Svc. Corp. v. Offshore Raydist Inc.*, 263 F.2d 5, 22-23 (5th Cir. 1959). The doctrine of unclean hands “is a part of ‘a universal rule guiding and regulating the action of equity courts,’ namely, that he who seeks equity

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should be allowed, such as admissions made by the alien in the Pre-Sentence Investigation or to the police. There is some authority for this approach. The Seventh Circuit sometimes departs from the modified categorical approach, justifying its action by indicating that the alien has admitted the underlying facts. *See, e.g., Lara-Ruiz v. INS*, 241 F.3d 934, 941 (7th Cir. 2001).

- Counsel could hold a mini-criminal trial during the removal proceeding. The respondent's counsel can offer evidence to show of the crime of which the respondent was convicted. For example, continuing with the same example of temporary and permanent takings, the respondent could testify, if it were true, that he or she intended to return the property or at least that he or she took it on impulse, with no intent to deprive the owner of the property permanently.

Conclusion

The traditional categorical and modified categorical tests provide a powerful tool for counsel seeking to represent aliens with criminal convictions. It is essential to understand precisely how these tests should work and to hold the decision-maker to the legal requirements of the tests. Even though *Matter of Silva-Trevino* constitutes a radical departure from 80 years of law in evaluating the immigration consequences of a criminal conviction, counsel should challenge the decision as incorrectly decided and should continue to develop new theories and approaches to representing clients who are affected by the decision. **TFL**

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Endnotes

¹*See Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007).

²*See, e.g., Huerta-Guevara v. Ashcroft*, 321 F.3d 883, 888 (9th Cir. 2003); *Hernandez-Mancilla v. INS*, 246 F.3d 1002, 1005 (7th Cir. 2001); *Lopez-Elias v. Reno*, 209 F.3d 788, 792 (5th Cir. 2000).

³*See, e.g., United States v. Woods*, 576 F.3d 400, 404–406 (7th Cir. 2009); *Stubbs v. Attorney General*, 452 F.3d 251, 254 (3d Cir. 2006); *Carty v. Ashcroft*, 395 F.3d 1081, 1084 (9th Cir. 2004); *United States v. Calderon-Pena*, 383 F.3d 254, 258 (5th Cir. 2004); *Dickson v. Ashcroft*, 346 F.3d 44, 46 (2d Cir. 2003); *Hamdan v. INS*, 98 F.3d 183, 187 (5th Cir. 1996).

⁴*See, e.g., Sbarashidze v. Gonzales*, 480 F.3d 566, 569 (7th Cir. 2007); *Matter of Ajami*, 22 I. & N. Dec. 949, 950 (BIA 1999).

⁵*Shepard v. United States*, 544 U.S. 13 (2005); *United States v. Kovac*, 367 F.3d 1116, 1120 (9th Cir. 2004).

⁶*See, e.g., Perez v. Mukasey*, 512 F.3d 1222, 1227 (9th Cir. 2008); *Larin-Ulloa v. Gonzales*, 462 F.3d 456, 464 (5th Cir. 2006); *Omari v. Gonzales*, 419 F.3d 303, 309 (5th Cir. 2005).

⁷*See, e.g., United States v. Woods*, 576 F.3d at 406–407; *Lanferman v. BIA*, 576 F.3d 84, 88–89 (2d Cir. 2009); *Evanson v. Attorney General*, 550 F.3d 284, 291 (3d Cir. 2008); *Martinez v. Mukasey*, 551 F.3d 113, 118 (2d Cir. 2008); *Larin-Ulloa*, 462 F.3d at 464.

⁸*D.C. v. State*, 436 So. 2d 203, 205–206 (Fla. Ct. App. 1983).

⁹*See Quilodran-Brau v. Holland*, 232 F.2d 183, 184 (3d Cir. 1956); *Khalaf v. INS*, 361 F.2d 208, 209 (7th Cir. 1966); *McNaughton v. INS*, 612 F.2d 457, 459 (9th Cir. 1980); *Morasch v. INS*, 363 F.2d 30, 31 (9th Cir. 1966); *Matter of Garcia*, 11 I. & N. Dec. 521, 523 (BIA 1966).

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must do equity.” *In re MacNeal*, 393 B.R. 805, 810 (S.D. Fla. 2008). “[W]hen a party, who, as actor, seeks to set the judicial machinery in motion and obtain some remedy, has violated conscience, or good faith, or other equitable principle, in his prior conduct, then the doors of the court will be shut against him in limine; the court will refuse to interfere on his behalf, to acknowledge his right, or to award him any remedy.” *Id.* (Citing POMEROY’S EQUITY JURISPRUDENCE § 397 at 657 (3d ed. 1905)). Furthermore, the courts require that the offending party’s conduct relate to the matter in litigation. *Id.*

²⁰*See* 8 C.F.R. § 212a.2(e)(2)(i) (establishing that one of the conditions that terminate the sponsor’s obligations under Form I-864 is accrual of the 40 qualifying quarters under the Social Security Act). The legislative history makes clear that the 40 quarters cannot accrue unless or until the immigrant files his or her federal taxes, *See* S. REP. NO. 249(1996). A qualifying quarter is a three-month period: (1) during which

the immigrant earned enough for the period to count as a quarter for Social Security coverage, (2) during which the immigrant did not use welfare, and (3) which occurs in a year in which the immigrant paid federal income taxes.

²¹*Steinhardt v. Rudolph*, 422 So. 2d 884, 890 (Fla. App. 1982).

²²*Id.*

²³There is a further issue as to whether the so-called fugitive disentitlement doctrine applies in Form I-864 cases to foreclose the utilization of the judicial process by the intending immigrant where the person is, for example, subject to an order of deportation or removal and has willfully failed to report to immigration authorities. *See Pesin v. Rodriguez*, 244 F.3d 1250, 1252 (11th Cir. 2001); *Magluta v. Samples*, 162 F.3d 663, 664 (11th Cir. 1998); *Bar-Levy v. INS*, 990 F.2d 33, 35 (2d Cir. 1993). *See also Gao v. Gonzales*, 481 F.3d 173, 176 (2d Cir. 2007); *Sapoundjiev v. Ashcroft*, 376 F.3d 727, 729 (7th Cir. 2004).