

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHIOMA NWAUWA,

Plaintiff,

v.

KINGSLEY UGOCHUKWU,

Defendant.

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1:18-CV-1130-RP

ORDER

Before the Court is Plaintiff Chioma Nwauwa’s (“Nwauwa”) Motion for a Preliminary Injunction, filed on April 4, 2019. (Dkt. 10). Nwauwa seeks an order compelling Defendant Kingsley Ugochukwu (“Ugochukwu”) to perform his obligations under a Form I-864 Affidavit of Support. (*Id.*). Ugochukwu filed a response, (Dkt. 15), and Nwauwa filed a reply, (Dkt. 17). The Court held a hearing on the motion on April 24, 2019. Having considered the parties’ submissions, the supporting evidence, and the relevant law, the Court finds that the motion should be denied.

I. BACKGROUND

Under the Immigration and Nationality Act, a citizen may sponsor a prospective immigrant who would otherwise be barred as a “public charge” likely to depend on public benefits. *See* 8 U.S.C. § 1182(a)(4); 8 U.S.C. § 1183a(a). A sponsor who signs an Affidavit of Support agrees to maintain the sponsored immigrant at an annual income that is not less than 125 percent of the Federal poverty line. 8 U.S.C. § 1183a(a)(1)(A).

Ugochukwu sponsored Nwauwa after they married in 2013. (*See* Ugochukwu Testimony, Hr’g Tr., 39:23–40:2). Ugochukwu is a United States citizen residing in Austin, Texas. (Compl., Dkt. 1, ¶ 11). Nwauwa is a citizen of Nigeria and a lawful permanent resident (“LPR”) of the United States. (*Id.* ¶ 10). In July of 2016, Nwauwa left the marital home, taking their infant son. (Mot., Dkt.

10, at 9). She now resides with their son in Kansas City, Missouri. (Compl., Dkt. 1, ¶ 10). The parties are currently finalizing their divorce. (*See* Hr'g. Tr., at 40:24–41:5) Since their separation in 2016, Ugochukwu has made regular bank transfers to Nwauwa, provided health insurance for Nwauwa and their son, and maintained a joint bank account with her until she caused him repeated overdraft charges. Pursuant to their current divorce negotiations, Ugochukwu is now also paying \$1,850 in monthly child support.¹

Nwauwa contends that on top of these payments, the Affidavit of Support requires Ugochukwu to pay her an additional monthly income of \$1,301. She filed this lawsuit asserting a claim for financial support under the Form I-864 Affidavit of Support on December 31, 2018, (Compl., Dkt. 1), and the instant motion for a preliminary injunction on April 4, 2019, (Mot., Dkt. 10). Specifically, Nwauwa requests an injunction ordering Ugochukwu “to cease violating his duty under the Form I-864, Affidavit of Support” and pay her \$1,301 per month until (1) Nwauwa becomes employed, (2) this case is resolved in Ugochukwu’s favor, or (3) a terminating event occurs under the statute. (Proposed Order, Dkt. 10-1).

II. LEGAL STANDARD

A court may issue a preliminary injunction under Rule 65. Fed. R. Civ. P. 65(a)(1). The party seeking a preliminary injunction must establish: “(1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm if the injunction is not granted; (3) that the threatened injury outweighs any harm that the injunction might cause to the defendant; and (4) that the injunction will not disserve the public interest.” *Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 288 (5th Cir. 2012). “[A] preliminary injunction is an extraordinary remedy which should not be granted unless the party seeking it has ‘clearly carried the burden of persuasion’ on all four requirements.” *PCI Transp., Inc. v. Fort Worth & W. R. Co.*, 418 F.3d 535, 545 (5th Cir. 2005) (quoting

¹ Nwauwa has not disputed any of these facts and the Court finds them to be true at this stage.

Miss. Power & Light Co. v. United Gas Pipe Line Co., 760 F.2d 618, 621 (5th Cir. 1985)). The decision to grant a preliminary injunction is to be treated as the exception rather than the rule. *Valley v. Rapides Parish Sch. Bd.*, 118 F.3d 1047, 1050 (5th Cir. 1997).

III. LIKELIHOOD OF SUCCESS ON THE MERITS

The parties do not dispute that Ugochukwu sponsored Nwauwa by signing a Form I-864 Affidavit of Support. But because Nwauwa has not clearly shown that Ugochukwu is in breach of his obligations under the Affidavit, the Court finds that Nwauwa has not clearly carried the burden of persuasion to show a sufficient likelihood of success on the merits in order to justify a preliminary injunction.

A. Legal Standard

Under the Immigration and Nationality Act, a citizen may “sponsor” a prospective immigrant by executing an Affidavit of Support “to establish that [the] alien is not excludable as a public charge” and not likely to rely on the U.S. government for financial support. 8 U.S.C. § 1183a(a). The Affidavit is “a contract” by which “the sponsor agrees to provide support to maintain the sponsored alien at an annual income that is not less than 125 percent of the Federal poverty line during the period in which the affidavit is enforceable.” *Id.* at § 1183a(a)(1)(A). The sponsored immigrant has a private right of action to enforce the Affidavit. *Id.* at § 1183a(a)(1)(B). The Affidavit form itself warns sponsors of these obligations.²

Divorce does not terminate an Affidavit of Support. *Ainsworth v. Ainsworth*, No. CIV.A. 02-1137-A, 2004 WL 5219037, at *2 (M.D. La. May 27, 2004) (“[N]either in the statute nor in the I.N.S.

² Form I-864 states: “If an intending immigrant becomes a lawful permanent resident . . . based on a Form I-864 that you have signed, then, until your obligations under Form I-864 terminate, you must: (A) Provide the intending immigrant any support necessary to maintain him or her at an income that is at least 125 percent of the Federal Poverty Guidelines for his or her household size.” Form I-864, Affidavit of Support Under Section 213A of the INA, Part 8 (2018), *available at* <https://www.uscis.gov/i-864>. Additionally: “If you do not provide sufficient support to the person who becomes a lawful permanent resident based on a Form I-864 that you signed, that person may sue you for this support.” *Id.*

regulation is divorce listed as an event that ends the enforceability of the contract.”). An Affidavit is enforceable until one of five terminating events: (1) the sponsored immigrant is naturalized as a U.S. citizen; (2) the sponsored immigrant has worked 40 qualifying quarters of coverage under the Social Security Act; (3) the sponsored immigrant ceases to hold the status of permanent resident and departs the United States; (4) the sponsored immigrant receives an adjustment of status during removal proceedings; or (5) the sponsored immigrant or the sponsor dies. *See* 8 U.S.C. § 1183a(a)(2)–(3), 8 C.F.R. § 213a.2(e)(2); *see also Ainsworth*, No. CIV.A. 02-1137-A, 2004 WL 5219037, at *2 (M.D. La. May 27, 2004).³

In order to serve as a sponsor, a person must demonstrate that his or her “reasonably expected household income for the year . . . would equal at least 125 percent of the Federal poverty line for the sponsor’s household size.” 8 C.F.R. § 213a.2(c)(2)(i)(C)(1). The Affidavit does not require a sponsor to show that his household income is any greater than the amount he must provide to the intending immigrant.

B. Discussion

The law is clear that a person who executes an Affidavit of Support is contractually bound “to provide support to maintain the sponsored alien at an annual income that is not less than 125 percent of the Federal poverty line during the period in which the affidavit is enforceable.” 8 U.S.C. § 1183a(a)(1)(A). The support obligation continues forever until the sponsored immigrant becomes a citizen, gains secure employment as defined under the statute, the sponsor or the immigrant dies, or their immigration status changes in a relevant way. *See* 8 U.S.C. § 1183a(a)(2)–(3), 8 C.F.R.

³ Although Ugochukwu alleges that Nwauwa fraudulently induced him to enter into marriage, the Court does not address this claim. Other courts have ruled that fraud in the inducement is not a defense to enforcement of an Affidavit of Support, and this Court agrees with their reasoning that the validity of a marriage is a question for determination in state court. *See, e.g., Dorsaneo v. Dorsaneo*, 261 F.Supp.3d 1052, 1055 (N.D. Cal. 2017), appeal docketed, No. 18-15487 (9th Cir. Mar. 26, 2018); *Wenfang Liu v. Mund*, 748 F. Supp. 2d 958, 963 (W.D. Wis. 2010), *on reconsideration*, No. 09-CV-500-WMC, 2011 WL 13187126 (W.D. Wis. Jan. 21, 2011).

§ 213a.2(e)(2). Neither the statute nor the implementing regulation identify divorce as a terminating event. *Ainsworth*, 2004 WL 5219037, at *2.

Although the Court has not seen documentation of the Form I-864 itself, the parties do not dispute that Ugochukwu sponsored Nwauwa by signing a Form I-864 Affidavit of Support. The Court takes this fact as undisputed. Based on the facts in the record at this time, the Court finds that the Affidavit of Support between the parties is valid and enforceable even after their separation and divorce because no terminating events have occurred under the statute or implementing regulations.

However, the Court is not persuaded that Ugochukwu is in breach of his obligations. For the extraordinary remedy of a preliminary injunction, Nwauwa must clearly carry the burden of persuasion to show a likelihood of success on the merits. *PCI Transp., Inc.*, 418 F.3d at 545 (quoting *Miss. Power & Light Co.*, 760 F.2d at 621). Nwauwa has provided no evidence to show that she receives less than \$1,301 from Ugochukwu each year. Nwauwa has not offered into evidence any bank statements, tax filings, or other documentation to support her claim. She has offered only a sworn affidavit stating that Ugochukwu “served as my immigration petitioner and Form I-864 sponsor after we were married,” (Nwauwa Decl., Dkt. 17-1, ¶2), copies of certain immigration paperwork, (I-797 Notice, Dkt. 17-1, at 4–5), and copies of checks that Ugochukwu wrote for her Form I-485 in 2014, Biometrics, and Form I-130 applications (Immigration Fee Payments, Dkt. 17-1, at 7). None of these materials indicate Nwauwa’s financial situation at this time or whether she has received any payments from Ugochukwu. Yet Ugochukwu has offered evidence that he has sought diligently to provide support to Nwauwa and their son. Since their separation in 2016, Ugochukwu has made regular bank transfers to Nwauwa, typically in amounts ranging from \$300 to \$800 every two weeks, (Bank of America Transfers, Dkt. 15-1, at 12–28), provided health insurance for Nwauwa and their son (Aetna Records and Correspondence, Dkt. 15-1, at 30–31), and even maintained a joint bank account with Nwauwa until she caused him repeated overdraft charges,

(Chase Statement, Dkt. 15-1, at 4–11).⁴ Pursuant to their current divorce negotiations, Ugochukwu is now also paying \$1,850 in monthly child support.

Because Nwauwa has provided no evidence to show that her income from Ugochukwu is less than the Federal Poverty Guidelines for her household, she has not clearly shown that Ugochukwu is in breach of his obligations under the Affidavit of Support and she has not met her burden to establish a likelihood of success on the merits. Further, the Court is not convinced that Ugochukwu's bank transfers, healthcare benefits, and child support would not satisfy his duty under the Affidavit.

IV. CONCLUSION

Accordingly, **IT IS ORDERED** that Nwauwa's Motion for a Preliminary Injunction, (Dkt. 10), is **DENIED**.

IT IS FINALLY ORDERED that because Ugochukwu is acting *pro se*, the Clerk of Court shall serve a copy of this order to him by certified mail and by e-mail.

SIGNED on May 10, 2019.



ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

⁴ Nwauwa has not disputed this claim. On a bank statement for the period ending on September 14, 2016, the total year-to-date overdraft fees were \$1,503. (Chase Statement, Dkt. 15-1, at 11).