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No. 49839-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

In re the Marriage of:

JOHN MASON,

Appellant,

and

TATYANA MASON,

Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR THURSTON COUNTY,

The Honorable Chris Wickham

BRIEF OF RESPONDENT

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A. INTRODUCTION

This is a fairly straightforward case of a trial court exercising its discretion under CR 60(b)(11) to vacate a child support order. The sole issue is whether the trial court acted within its discretion in deciding that the parties' recent discovery of a 1999 (I-864 immigration Form) affidavit of support requiring John Mason to provide ongoing financial support for Tatyana Mason, combined with her inability to speak and understand English, his domestic violence toward her, and her immigration situation are extraordinary circumstances justifying vacation of the child support order. The 2016 trial court here did not abuse its discretion.

Tatyana is not an attorney, she has limited English proficiency and has written this brief with the aid of a native English speaker, but she is *pro se,* as she was at the 2016 trial.

B. RESTATEMENT OF ISSUES

1. Did John fail to preserve any res -judicata or collateral estoppel argument at trial, therefore waiving any such issues on appeal?

2. Can res judicata or collateral estoppel apply when the issue in a current case centers on a piece of newly discovered evidence not previously brought forth in litigation?

3. Did the 2016 trial court act within its discretion when it found that John Mason's domestic violence against Tatyana impacted his

incentive to support permanent residency for Tatyana?

4. Did the 2016 trial court act within its discretion when it found that Tatyana is not able to work due to her current immigration status?

5. Did the 2016 trial act within its discretion when it found that the child support arrears which have accrued under the 2013 order of Child Support are preventing her from removing the conditions on her current resident status, obtaining permanent residency and earning a living in the United States?

6. Did the trial act within it discretion when CR11(b)(11) allows the motion to be filed later than one year from the date of entry of the order on child support?

7. Did the 2016 trial court act within its discretion in denying John Mason's motion for reconsideration?

8. Did the 2016 trial court act within its discretion in awarding Tatyana Mason $8,533 in expert testimony fees for an immigration expert?

9. Did the 2016 trial court act within its discretion in awarding Tatyana $4, 267 in CR 11 sanctions?

10. Was the 2016 trial court entitled to find Tatyana's immigration expert more credible than John Mason's immigration expert?

11. Is John Mason entitled to attorneys fees and costs on appeal

when the 2016 trial court found that he caused three days of unnecessary hearings, increased the cost of litigation, delayed the proceedings by providing his trial brief on the morning of trial and continues to cause unnecessary litigation in this Court?

C. RESTATEMENT OF THE CASE

Due to John's misstatement of many of the facts, Tatyana offers this Restatement of the Case to aid the Court in understanding the issues.

I. Relevant Facts.

a. Relevant procedural and factual background: John brought Tatyana to the United States on a fiancée visa in 1999. CP122(C). Tatyana did not speak or understand English. 2 RP 244.[1] The couple handled Tatyana's immigration matters without the aid of an attorney; John handled all the paperwork. 2 RP 244. Among the forms John filled out in 1999 was an I-864 Form- an Affidavit of Support. Ex 33. (I-864 Form *See* Attachment A). The Affidavit of Support is a contract between John and the United States Government wherein John promises to financially support Tatyana until one of the conditions occurs which terminates his obligation. INA 213(a)(3)(b); CP1820-24; Ex.33(p.11); CP1820-24; CP1837-38. In the Affidavit, John stated:

[1] The Verbatim Report of Proceedings are consecutively numbered and shall be referred to first by the date then "RP" then the page number.

> "... [I] understand that my obligation will continue until my death or the sponsored immigrant(s) have become U.S. citizens, can be credited with 40 quarters of work, depart the United States permanently, or die." Ex.33 (p.11); (I-864 p. 4).

The parties had two years following the issuance of the documents granting Tatyana's conditional residence status within which to remove the conditions on Tatyana's status, i.e., to apply for a permanent green card. CP 123(D); CP 1836-37. It means that shortly after the issuance of conditional residence, John lost his incentive to support permanent residence for Tatyana. Tatyana become the victim of domestic violence from John CP 1825-51; CP 123(E).

By 2001, John had begun committing domestic violence against Tatyana and Tatyana began obtaining domestic violence victim services at SafePlace. 2 RP 236. According to records presented by the executive director of SafePlace, "Ongoing physical and verbal abuse by John, threats of deportation, threats to take Tatyana's children away, and ongoing financial manipulation and control" 3 RP 380; Ex.14. Tatyana did not separate from John because she had an infant, no car, no money of her own, no relatives here, John had taken her passport, and she spoke very little English. 2 RP 238-9; Exh .82. Tatyana lived on student loans only. 2 RP 233-34; 3 RP 475; Ex. 82; CP 1812; CP 1815-16.

In 2004 Tatyana's mother passed away in the Ukraine and John

temporarily gave her back her passport and granted her permission to travel to the funeral. Ex82. John kept the children as hostage. John required Tatyana to sign a contract saying she would pay back the money for the plane ticket with interest. Id. Tatyana returned to the U.S. in two weeks. CP 124(E); 3 RP239; CP1955-56; Supp. CP__, sub. 50. Tatyana continued to obtain domestic violence victim help and support from SafePlace from 2001 through the 2008 divorce. 3 RP 380-92; Exh. 14; CP 123(E); CP1955-56.

In 2007, when the parties separated, John kidnaped the children. The superior court found that he had committed numerous domestic violence acts against Tatyana, that his testimony was not credible, that he had committed "acts of control" against Tatyana, and that Tatyana was a "disadvantaged spouse" whose testimony was credible. Supp. CP__,sub #50 (Attachment B). Several witnesses confirmed John's domestic violence toward Tatyana. Tatyana is quoting only two in this brief: Soon Lee was a close family friend and knew John, Tatyana and their children since 2001 on a daily basis. Soon wrote in her declaration:

> " ... While Tatyana was pregnant with her second child her husband continued to abuse Tatyana and her children- pushed her off of their patio, called her "fat cow" when she was pregnant. I remember how John refused to buy formula for her new born baby and said to Tatyana to feed their infant with 2% milk because it was cheaper than baby formula. From my memories, Tatyana and her children lived the entire time in fear".

CP 1812. Vanessa Stewart wrote in her declaration that:

> "John did not care, nor support Tatyana and her children during their marriage"

CP1 808-10. The court entered an order protecting Tatyana from John. Supp. CP__, sub#50.

At no time after separation did John honor his obligation under the I-864 affidavit to support Tatyana. 3 RP 340; Supp. CP__, sub 56; Exh. 53. He paid Tatyana in total $800/month for 18 months this includes $200 child support to me. (In 2007 Tatyana was a full custodial and John had visitations only). Supp. CP__, sub 50; CP__, sub 56. John did not fully support Tatyana as required by the I-864 affidavit Tatyana and after maintenance and her school loan ended Tatyana had no means of support and became homeless. CP 1815-16; Exh. 53; 3 RP 340. In 2008, after the divorce, Tatyana filed for bankruptcy. 2 RP 327.

In 2011 John filed for modification and sole custody, claiming Tatyana abused the children. 3 RP 341-3 Ex55. Tatyana, still with limited English proficiency with zero income, lost the parenting plan modification case in 2013. 3 RP 348-9. Ex55.

While Tatyana was represented *pro-bono* prior to 2016 court, she did not understand much of what was happening as her English was even poorer than it is now and there was no interpreter. 2RP316; CP123(G).The 2013 court imputed income to Tatyana stated that she is "voluntarily

unemployed" and ordered her to pay monthly child support to John and cost for reunification with her children as well pay expensive physiological evaluation. CP55.

The I-864 affidavit of support was not considered by the court when it ordered child support in 2013; Tatyana did not know about the existence of the I-864 at the time since she did not understand immigration law and did not speak English and at the time the document was filed and John completely failed to disclose his obligation to financially support Tatyana. CP 123-24; CP 1828-41; CP 1927-33. Homeless and unable to work, because she cannot prove lawful residency, she was unable to pay for either child support or reunification counseling nor for physiological evaluation. CP 123(H); Exh. 37; Exh. 38; CP 2012; Exh. 40; Exh. 41.

At trial, both Tatyana and her friend Stacy Simpson testified that Tatyana is homeless, penniless, and survives by couch surfing at several friends' houses, despite applying for many jobs.1 RP120-29, 134. The 2016 Court found: "Tatyana is unemployed and homeless" 4 RP 17.

Tatyana is not an attorney. She was unable to afford an attorney and with poor English comprehension, she tried to extricate herself from this vicious cycle and enable herself to work, going through the 2014 appeal as a *pro se*, not knowing the law, writing a brief in broken English which of course was denied by the Court of Appeals in July 2015. *See*

Mason v. Mason No.45835-7-II (July 2015 Opinion). Later in 2015 Tatyana filed various motions for reconsideration, revision, dismissal of the arrears, and modification of child support as well as modification of the parenting plan, reconsideration, and revision. 3 RP350-56. She explained to the court each time that she was unable to work because of her immigration status. 1 RP 134; 3 RP 357.

During the 2013 proceedings, Tatyana was still unaware of the existence of the I-864 since it was filed by John at a time when neither her pro-bono attorney nor she knew immigration law. Tatyana could not speak English and John never disclosed its existence to her. CP 123-24; 4 RP 17-20; CP 1828-34 CP 1927-34. Exh. 80.

In November 2015, Tatyana requested dismissal of the child support arrears, which was denied. Exh. 61. Next she filed for reconsideration and was denied based on John's allegation that the motion for reconsideration was served late to his attorney in December 2015. Supp CP__, sub# 586. Then in January 2016 she revised commissioner's ruling and the revision Judge Schaller allowed Tatyana to go forward with her motion. Exh. 62. In February 2016 a commissioner denied her motion without oral argument. Exh. 63. Tatyana asked for revision. The case was moved to Judge Wickham. On April 1, 2016 Judge Wickham granted Tatyana's motions for reconsideration and scheduled for a revision, requesting

Tatyana file new evidence regarding her immigration matter. Supp. CP__, sub# 670. Tatyana happened upon Love v. Love, 33 A.3d 1268, 1273-75 (Pa. S.Ct. 2011), an immigration case which references the U.S. citizens spouse's obligation to file an I-864 affidavit.

Tatyana obtained a copy of the I-864 affidavit from the local immigration office and presented it at the April 29, 2016 hearing. Supp. CP___sub# 681. Based on Tatyana's claim that John had filed an I-864 Affidavit, Judge Wickham decided to hear Tatyana's revision motion as a CR 60(b)(11) motion and on April 29, 2016 ordered the parties to file a FOIA request for I-864 affidavit of support, so as to establish whether John had filed an I-864. 3 RP 401; 3RP 354-58. Supp. CP__, sub#681

Tatyana immediately obeyed Judge Wickham and filed the FOIA request exactly as the judge directed; as a result, she received her full file including the notarized I-864 signed by Mr. Mason. 2 RP 295; Exh. 33; Exh. 34: Exh. 35 Exh. 36 p.5. However, John did not file the FOIA request for I-864 as directed by Judge Wickham; instead, he filed a different FOIA request for I-129 and I-130, a short term pre-marital affidavit limited to the documents regarding Tatyana's initial fiancée visa application. 3 RP 401. John's request was denied by FOIA and he received nothing. 3 RP 367; Ex.7; Ex. 80. Ex.80 Attachment C.

On July 8, 2016 The Court determined that the issues should be resolved via a CR 60 and that the I-864 issue required a trial. Supp CP __, sub# 702. Tatyana asked court if the CR 60 motion could be set for a hearing instead of trial because she is not an attorney, has no knowledge of trial procedure, and poor English. On August 10, 2016 the court ruled that since John's attorney raised the issue of credibility of I-864, the court must review the facts and this matter has to go to trial. Supp. CP___, sub# 729.

Trial

b. Mr. Mason's unsuccessful claim that Tatyana forged the I-864 affidavit of support. On the morning of the first day of trial (October 17, 2016), the court made a finding that John Mason's attorney had not disclosed witnesses to Tatyana and had not served Tatyana with John's trial brief and list of witness until the morning of trial, whereas Tatyana had timely disclosed all her witnesses and served John's attorney at the status conference. 2 RP 165.

At trial, John Mason variously denied outright signing an I-864, and claimed that he simply did not recall signing an I-864. He choose to ignore that I-864 is required by the US law, instead John focused on challenging the authenticity of the I-864 and accusing Tatyana of forgery. 4RP1-5; Ex.45; Ex.49; Ex.80. John Mason chose to focus on perceived defects in

the copy of the I-864 affidavit Tatyana had initially obtained from the local immigration office, which although identical in all material respects to the one obtained from the FOIA request, John Mason repeatedly claimed was falsified. 3 RP365, 411; 4 RP16-20; Ex.80; Ex49.

On the witness stand, John Mason refused to answer directly whether he had ever signed an I-864. 3 RP 397, 398, 403. He acknowledged that he wrote in a declaration earlier in the year "Respondent claims that I would have had to complete an I-864 as part of the fiancée visa application, but that is not true." 3 RP 397-8. As the court noted in its CR 11 order, John Mason denied filing the I-864 in a declaration filed by his attorney on July 6, 2016:

> "She [Tatyana] claimed in part that I have filed an I-864 support affidavit when she came to this country, and, therefore, I should have been supporting her, and she never should have been required to pay child support. Nothing could be further from the truth"

and

> "I believe the I-864 was a document I may have started to complete, but it was not what I was required to file and so I did not complete or file the document"

and

> "Respondent claims that I would have to complete I-864 as part of the fiancée visa application, but that is not true"

and

> "Respondent's representation that I had to have filed the I-864 form is simply not true."

Exh .80; 4 RP 16-18.

In response to the court's direct question asking John whether he was contesting the authenticity of the notarized I-864 obtained through the FOIA request, he admitted only that the one obtained directly from the Government by Tatyana's immigration expert "looks to be official." 3 RP 411. He refused to give the court a straight answer. Id.

Mr. Gairson's report explained in detail how he came into possession of the I-864 signed by John Mason, the process of filing an I-864 and the government's procedures for authenticating the I-864, and he opined within a reasonable degree of certainty that the I-864 received in the FOIA request was authentic, true, and correct, and had been signed and filed by John Mason. Ex.36(p.18-19); Ex.10; Ex.33; Ex.34; Ex.35; CP 1820-24.

John Mason's immigration expert, Lisa Seifert, claimed the I-864 originally obtained by Tatyana was "falsified" because the stamp said "Department of Justice" and there should not be a DOJ stamp. Ex.45; Ex.49. In Lisa Seifert's declaration filed on July 7, 2016, she wrote:

> "[i]f the document actually came from an immigration file (from CIS), any stamp would be from the relevant agency which is not Department of Justice, but Department (DOJ) of Homeland Security. I believe the stamps are a very bad fake of a government stamp." Ex. 45; Ex. 49.

On cross-examination, Ms. Siefert was forced to concede that in 1999, the year John signed the I-864 Affidavit and that it was stamped, the

Department of Justice had authority, and that it continued to have authority over immigration applications until March 4, 2003; and therefore that the DOJ and INS stamps are appropriate on a 1999 I-864 Affidavit. 1 RP 52; 1 RP 55; 1 RP 66.

Even after this admission by his own expert, John insisted during testimony that "this is the exact same form Tatyana originally presented, but then it appears that she doctored it up with Department of Justice logos" and "clearly, it's a falsified document that she doctored up, apparently." 3 RP 364-5; Ex45; Ex.79; Ex.80. John did not argue at the trial that the I-864 had been presented to any other judicial official in Thurston County. CP 123(G).

c. Tatyana's immigration status. John's immigration expert, Lisa Seifert, testified that all Tatyana has to do to gain unconditional permanent resident status is file a form I-751 "petition to remove conditions" and her residency will automatically be renewed for ten years, she will be legally able to work, there will be no risk, and it is basically guaranteed that the government will approve it. 2 RP 180-83; CP 1935-36. Ms. Seifert denied that having child support arrears would be a barrier to removing her conditions of residency. 2 RP 18. Ms. Seifert testified that it is a very easy process and that as soon as she filed the application, Tatyana would immediately and without any need for a hearing receive a "receipt notice"

that would automatically give her ten years of legal residency. 2 RP 182.

Jay Gairson, Ms. Mason's immigration expert, testified regarding the I-864 Affidavit obtained from Tatyana's FOIA request and regarding the 55 pages of documents he received from the government related to her immigration status. 1 RP 38-106. Ex. 33; Ex. 34; Ex. 35; Ex. 36; Ex. 76; CP 1935-36. He explained that based on Tatyana's file, she was given a "conditional permanent residence" that was valid for only 2 years. 1RP 52; CP 1820-21.

Before that 2 year period ran out, as the US citizen- John has a requirement to apply to remove the "conditional" part of Tatyana's residence status by filing an I-751 petition for removal. Id; Ex. 36 (p. 10). John did not do so. 1 RP 54, 56. Ex.37 (p.2); Ex.38.

Mr. Gairson testified that once the 2 year deadline is missed, it becomes progressively more difficult to have the conditions removed as more time elapses without the I-751 petition for removal being filed. 1 RP 53-5, 70. Ex. 36; CP 1935-36. Once the deadline is missed, permanent residency is presumed to be automatically terminated under the INA §216(B)(C). 1 RP 52-5, 70; Exh. 74; Exh. 75. Filing the petition while the parties were married would have required John to take affirmative action. 1 RP 56. CP 1934-37,43. As of trial, the deadline for filing the petition was 16 years ago. 1 RP 54; Exh. 36 (p. 5); Exh. 76; CP 1936.

Once the deadline is missed, the alien must appear and provide good cause for why they missed the deadline. 1 RP 55; 2 RP 268; Ex.76. It is extremely difficult to recuperate residency so long after the deadline; to the contrary, the government is directed to put the alien into deportation proceedings, so there is risk involved. 1 RP 70; 2 RP 267; CP 1935-36, 66-03.

The government will require an interview where she proves that she and John had a "real relationship" and even having children together is not sufficient proof if the alien cannot bring multiple original documents proving the existence of any biological children of the marriage.1RP70-71. This is because when there is a divorce, the government assumes the relationship was fraudulent at its inception. 1 RP 55. Mr. Gairson told the court that he had seen many cases where a hostile U.S. citizen spouse blocks the alien's access to the needed documents, and the alien is unable to obtain residency as a result. 1 RP 71. Mr. Gairson characterized the process as "absolutely unforgiving." Id.

Mr. Gairson testified that he handled one case where the parties had been divorced for four years, the wife vacated the divorce based on CR 60, then had the divorce itself vacated so that the parties could be "remarried" and the wife could recuperate her permanent residency status and have her conditions removed. 2 RP 287. Mr. Gairson also noted that

the government refuses to give any immigration benefit or status to a person who owes child support arrears. 1 RP69-71; Ex.37; Ex.38. Mr. Gairson noted that the aliens who "get around" this problem generally manage to take out loans or generate a large sum of cash some other way to pay off their child support arrears. 1 RP 71-2; Ex37; Ex38; CP2012.

Mr. Gairson also told the court that it is extremely difficult, if not impossible, to obtain work as an alien with an expired green card, since employers are supposed to verify immigration status and most use the government's E-VERIFY system. 2 RP 271; CP1934.

Mr. Gairson testified that Tatyana is listed as not employable on the E-VERIFY system. Id. Tatyana and her friend Stacy Simpson both testified that Tatyana has tried many times to get a job but is never able to be hired due to her immigration status. 1 RP120-29, 132.

d. John's continuing obligation of support under I-864.

Mr. Gairson told the court via testimony and his report (Exh. 36 p.15), that the conditions under which John's I-864 obligation to financially support Tatyana may be terminated are: (1) Death of the sponsor- John; (2) the person being sponsored (Tatyana) becomes a U.S. Citizen; (3) the sponsored immigrant (Tatyana) is credited with 40 quarters of gainful employment in excess of 125% of the federal poverty level; (4) the sponsored individual (Tatyana) permanently departs from the U.S. or (5)

dies. Exh. 36; Exh. 33 (I-864, page. 4).

John argued both that Tatyana is credited with more than 40 quarters of gainful employment and that she had permanently departed from the U.S. CP 1934-37, 43. Mr. Gairson explained in detail that Tatyana is credited with less than 40 quarters of gainful employment and that she had not permanently departed the U.S. 2 RP 247; Exh. 36 (p.20 #133-134); CP 1936-37, 43-45; CP 1966-2003.

e. Tatyana Mason's two week trip away from the U.S. Regarding departure from the U.S., Mr. Gairson explained that a person may travel outside the U.S. while holding U.S. conditional residency without being considered to have permanently departed. 2 RP 269. For Tatyana to be deemed permanently departed based on her two week trip to the Ukraine for her mother's funeral, she would have to have been given notice to appear on that issue by INS, and her file showed no such notice. Id. *See* 8 CFR 1001.1(p); CP 1943. According to Mr. Gairson, one must spend at least a year outside the U.S. in order to abandon it as one's lawful permanent residence. 2 RP 270; CP 1936-37.

Ms. Seifert admitted on cross-examination that the instructions for the I-864 affidavit of support apply to John's I-864 and that those instructions say that to lose the right to I-864 affidavit based on travel, the alien must "depart[] the U.S." 2 RP 218-19; CP 1936. The court,

questioning Ms. Siefert directly about this, pointed out to Ms. Seifert that the language says that the I-864 (page 4) obligation terminates if Tatyana "departs the United States permanently" *See* Ex. 33 (p.11); I-864 p.4- but Ms. Seifert disagreed that this is the applicable law. 2 RP 222. Instead, Ms. Seifert claimed that "settled principle," for which she could cite no authority, holds that an alien can lose their right to support under the I-864 from just a short trip abroad. 2 RP 222; CP 1935-37.

f. Evidence regarding credits of gainful employment by Tatyana. Mr. Gairson explained that Tatyana had not accumulated 40 credits of gainful employment, so John's obligation of support under the I-864 is not terminated on that basis. 1 RP 64-5; 2 RP 248-9, 252, 259-60. Mr. Gairson relied upon Immigration and Naturalization Act section 213A(b)(2) which states that the credits of the spouse shall be counted towards the alien so long as the alien remains the spouse, so long as the marital union still exists. 2 RP 248. He noted that this language is echoed in the Social Security Act. Id. Additionally, Mr. Gairson cited INA 213A(3)(II) which states that the U.S. citizen spouse's credits do not persist beyond the divorce and cannot be applied to the alien's 40 credit requirement. 2 RP 252; Exh. 36 (p.20); CP 1935-37; CP 45-49.

For the method of calculating qualifying quarters, Mr. Gairson quoted 8 CFR 213A(a)(3)(B)(ii), titled Qualifying Quarters. For purposes

of this section (on applicability and enforcement of the affidavit of support) "in determining the number of qualifying quarters of coverage under Title II of the Social Security Act, an alien shall be credited with" [section about parents] "all of the qualifying quarters worked by a spouse of such alien during their marriage and the alien remains married to such spouse or such spouse is deceased." CP 1945-49.

Similarly, he explained, the Social Security program operations manual has a mirroring section on supplemental income titled Lawfully Adjusted Permanent Resident, contained in publication TN 708-99. 2 RP 261. This manual is the means by which Social Security sets forth procedures regarding how it interprets federal regulations. 2 RP 262. Chapter (b)(2)(d)(4) of that publication is titled "qualifying quarters of former spouse" and it says "A former spouse's qualifying quarters cannot be credited if the marriage ended unless by death before a determination of alien eligibility is made for the lawfully adjusted permanent resident alien." It gives an example: "An LAPR (lawfully adjusted permanent resident) alien was married to a United States citizen for 12 years. The LAPR alien has no qualifying quarters of his or her own. The spouse earned over 40 qualifying credits during their marriage. The marriage terminated by divorce four months before the determination of eligibility was made for the LAPR alien. No qualifying quarters can be credited from

the former spouse in determining Social Security supplemental income eligibility. Id.; SI 00502.135(A)(5); INA 213(a)(3)(b)(ii); Ex.36 (p20); Ex. 74; Ex. 75; Ex. 76; CP 1935, CP 1945-49.

Based on the aforementioned language, Mr. Gairson testified that in his expert opinion, the credits that John accrued during their marriage are not credited to Tatyana once divorce occurs. Mr. Gairson detailed the calculation of both John and Tatyana's work history from the point of view of accruing quarters of gainful employment, opining based upon their work history that even if John's quarters were added to Tatyana's, Tatyana's total quarters would be at the most 37, so the I-864 support obligation cannot be terminated on that basis because there is no scenario under which Ms. Mason has reached 40 credits of gainful employment. 2 RP 276. CP 1945-49. CP 1966-2003.

John's attorney argued that the case of Davis v. Davis, 970 N.E.2d 1151 (Ohio Ct. App. 2012) required that John's credits be applied to Tatyana and that the total is over 40. 2 RP 175-77. Davis, an Ohio case, stands for the proposition that when the parties are separated but still married, it is possible to count both parties' quarters for purposes of accruing the 40 quarters needed to terminate the I-864 support obligation. 2 RP 176. CP 1935(4); CP 1945.

The court asked Ms. Seifert for authority for her theory that Mr.

Mason's income would be credited to Ms. Mason to reach the 40 credits needed for his support obligation to terminate. 2 RP 222. Ms. Seifert was unable to provide any authority for her theory. Id. Similarly, Ms. Seifert was unable to articulate a basis for her belief that John's support obligation had ended other than "based on my knowledge of the immigration law and what I understand how the Social Security law impacts that," and "it makes sense." 2 RP 224.

The trial court then questioned Mr. Gairson directly on rebuttal and determined that according to his calculations, even if all of John Mason's earnings during marriage were credited to Tatyana, it would only add up to 36 quarters; and that Tatyana herself only had one quarter, so the total possible credits accruing to Tatyana would be 37. 2 RP 274-5. The court concluded its questioning of Mr. Gairson with "even if all of his quarters were credited to her, she still doesn't get to the 40 credits?" Mr. Gairson's answer: **"Correct."** 2 RP 276. Mr. Gairson added that under SI 01130.455 and RM 01310.010 John cannot use Tatyana's work-study as part of her qualifying quarter's calculation. 2 RP 279.

g. Mr. Gairson's expert services bill. Mr. Gairson pointed out that his bill for expert services, $12,800 was higher than it normally is for his expert services, because Tatyana is a *pro se* litigant and has limited English proficiency. 2 RP 274. Mr. Gairson told the court that for these

reasons: "It is higher than I would prefer myself." 2 RP 274.

h. Mr. Gairson's role as an immigration expert. Mr. Gairson explained that although he practices immigration law, he is not representing Tatyana in any capacity, and he is not her immigration attorney. 1 RP 12, 21. He filed no notice of representation, conducted no examination, and served only as her immigration law expert at the hearing. Id. The court did not allow him to be questioned on any matters outside immigration law, specifically noting that he was only in court as an immigration expert. 2 RP 290, 294.

Similarly, John's immigration expert, Lisa Seifert, is an immigration attorney; like Mr. Gairson, she functioned only as an expert and did not participate in representing John at the hearing. Mr. Gairson also testified that Tatyana had not provided him any more information about her case than what was necessary for him to form his opinion on her immigration issues. 2 RP 298.

In his five years of practice, he has handled over 900 family-based immigration cases, nearly all of which have required an I-864 affidavit of support to be filed. 1 RP 23. He is on the Washington State Bar Association rules committee for immigration law and a frequent speaker on CLE panels with the American Immigration Lawyers Association. Id. John objected to Mr. Gairson's testimony and conducted 9 pages of voir

dire, arguing that he is unqualified to be an immigration expert and that because he is an attorney he cannot be Tatyana's witness. 1 RP 20-1; 25-33. The court accepted Mr. Gairson as an immigration expert based on his experience practicing immigration law. 1 RP 34.

i. The court's written ruling. In its written order, the court found that John had in fact signed and filed an I-864 affidavit of financial support for Tatyana. CP 123. The court found that the court that set child support in 2013 had not been made aware by either party of the I-864 requiring John to support Tatyana. Id. The parties had 2 years following the 1999 issuance of conditional residency within which to remove the conditions on Ms. Mason's residency. Id. The parties did not do so. Id.

Further, the court found that shortly after issuance of conditional residence status to Tatyana, she became the victim of domestic violence by John and that John did not have an incentive to support her permanent residency. Id. The parties separated in 2007 and divorced in 2008, with two minor children. Id.

The court found that there is no evidence that any other court has considered the I-864 affidavit in this case. Id. The court also found that Tatyana had not had interpretative services in this case prior to this hearing; the court specifically was persuaded that Tatyana has difficulty understanding and communicating in English and that she clearly

benefited from interpretive services at this hearing. Id.

The court specifically found that Tatyana is not able to work due to her current immigration status. Id. Further, the court found that the child support arrears which have accrued under the 2013 order of child support would likely prevent her from removing the conditions on her current resident status and obtaining permanent residency in the U.S. Id.

The court entered the following conclusions:

A. The I-864 affidavit created a continuing obligation of Mr. Mason to support Tatyana,

B. The obligation terminates if John dies, if Tatyana becomes a U.S. citizen, if Ms. Mason is credited with 40 quarters of gainful employment in excess of 125% of the federal poverty level, or if Ms. Mason permanently departs from the U.S.,

C. That none of the terminating events listed in B have occurred,

D. That Ms. Mason has earned sufficient income to be credited with one quarter, during her marriage. That, if John's earnings during their marriage were credited to her, those would provide an additional 29 quarters of qualifying employment. That these earnings do not meet the requirement of 40 quarters such as would terminate the obligation,

E. That although Tatyana did leave the country, it was to attend her mother's funeral for two weeks, after which time she returned to the U.S.,

F. That although Khan v. Khan, 182 Wn.App. 795 (2014) does not require a court determining spousal maintenance to enforce the obligation created by an I-864 affidavit, that case recognizes the appropriateness of the trial court's consideration of the affidavit,

G. That the I-864 affidavit is such a significant factor in this case that to set child support without its consideration creates an unjust result,

H. That a motion to vacate under CR 60 is an appropriate method to raise the issue of the failure of the court in setting child support to consider the affidavit,

I. That CR 60(b)(11) allows the motion to be filed more than one year from the date of entry of the order of child support, and

J. That the order of child support entered on November 25, 2013 should be vacated because the court was not informed of the existence of the I-964 affidavit at the time of the entry of the order. CP 124.

j. The court's oral ruling. The court's oral ruling is consistent with its written ruling, and sheds additional light on the court's reasoning and findings. The court found that Tatyana began attending SafePlace two years after her conditional residency was granted, and that John was found to have committed domestic violence against her. 3 RP 470. The court found that John had no real incentive to continue to work with Ms. Mason to maintain her permanent status in the U.S. from early in the marriage. Id.

The court noted that based on three days of observing Tatyana in court with interpreters, her English is not good and her statements were more clear through the interpreters than they were in her English. 3 RP 477. Accordingly, the court found it reasonable that Tatyana might not have done well with an English-speaking attorney or with an English-speaking court prior to this proceeding. Id. The court specifically observed that it is aware of no court proceedings prior to this hearing in which interpretive services were provided to Tatyana, she did not have interpretation in the motion hearings leading up to this hearing, and that Tatyana has therefore been operating at a disadvantage. 3 RP 478. As a result, since immigration is a complicated field, even for people who work in it, it is not hard for the court to understand why Tatyana would not have understood it fully. Id.

The court found that while it is still possible for Tatyana to file an I-751 petition to remove her residence conditions, she has presented compelling evidence that she is now in a disfavored status to do so, as someone who has significant unpaid child support. 3 RP 470. The court found that the immigration authorities have discretion to deny her permanent residency and that as a result she is in the awkward position of being unable to obtain permanent residence status. Id. The court found that it was "not hard to believe" that most employers will not hire her because

she is not able to show proof of legal status. Id. And if she were to go back to Immigration, she would most likely be denied because of the child support order. Id.

The court acknowledged that John's attorney had correctly pointed out that the case arrived in Judge Wickham's court through a "very circuitous path," yet no court had ever considered the impact of the I-864 on the obligations John. and Tatyana have toward one another. 3 RP 471. The court found that "certainly, if a court was entering a child support order, it would take into account whether or not the person receiving child support was also paying spousal maintenance to the person paying it. I mean, I think that goes without saying that that would be considered both in the calculation of the child support and as to offsets." Id. The court found that the I-864 affidavit is "the elephant in the room" in this case. 3 RP 473. The court termed it "a significant issue." 3 RP 479.

The court noted that while it is not required to enforce the I-864 affidavit, under Khan, the Khan case supports the relevance of the I-864 affidavit. 3 RP 471; 182 Wn. App. 795 (2014). The court further noted that as a year has not yet passed since the Court of Appeals resolved her child support appeal, CR 60(b)(1),(2), or (3) might also be appropriate avenues to resolve this issue. Id. Even with this in mind, the court found that CR 60(b)(11) is the most appropriate way to resolve the case, "any

other reason justifying relief from the operation of the judgment." Id. The court observed that in 25 years of being a court commissioner and trial judge, the court had never before found a basis to vacate a court order under (b)(11), as it is disfavored. Id. Court are encouraged to use (b)(1)-(10) and if they are not available, to deny the motion. Id.

Even so, the court found that (b)(11) exists and that it applies because "for an order to stand that involves the financial relationship of the parties, without considering the obligation of one to support the other makes no sense to me, and so I think it has to be considered." 3 RP 473-74.

Regarding continued operability of the I-864, the court noted that Davis stands for the proposition that, during separation, a spouse's quarters are credited to the quarters of the person being sponsored. 3 RP 474.The court concluded that Davis does not apply here because in Davis the parties were still married while here the parties are divorced. Id. Additionally, the court found that the immigration statutes require the parties to be married at the time the determination of 40 quarters is made. Id.

The court determined that Tatyana had one quarter of "gainful employment" during marriage and none since, and that by the court's calculation of John's quarters, 29 of them were earned during the parties' marriage, so even adding those together, Ms. Mason simply cannot not reach the 40 credit threshold. 3 RP 474-75.

Additionally, the court found that Tatyana's two week trip to her mother's funeral in the Ukraine was not a permanent departure from the U.S. 3 RP 475. The court found that none of the four conditions that would terminate operability of the I-864 have occurred. Id.

The court also found that during the majority of the Masons' marriage, Tatyana was not supported by John. Id. While he paid out the mortgage, Tatyana had testified that she had taken out a great deal of student loans. Id.

In vacating the child support order, the court noted that its intent was that it allow Tatyana to successfully apply for her green card and remove the conditions placed on her conditional permanent residence status, which will be beneficial to both parties, because it will allow her to then obtain citizenship, which will terminate John's I-864 support obligation. Id. The court left it up to John whether he wanted the court to enter a new child support order. Id.

k. The court's ruling on expert fees and CR 11 sanctions. Tatyana requested attorney's fees and costs and CR 11 sanctions. 4 RP 4. She requested fees and costs based on being the prevailing party and requested CR 11 sanctions based on John's attorney's misrepresentations and misquoting several cases at trial as well on many other issues, and based on John continuing to state in declarations under oath that he had never

filed the I-864 affidavit of support. 4 RP 4-5. 4 RP 16-20.

Additionally, Tatyana pointed out that John did not file the proper FOIA request as directed by the court on April 29, 2016, instead John was requesting information to which he was not entitled. 4 RP 5. Tatyana pointed out that John's attorney assisted him in misrepresenting a material fact to this court by presenting his sworn statement that he never signed an I-864 affidavit of support. Id.

John's attorney pointed out that attorney's fees are not recoverable to a pro se litigant. 4 RP 8-9. His attorney contested the reasonableness of Mr. Gairson's expert bill and stated that he came to court "allegedly as an expert."4 RP9. John's attorney stated outright that Mr. Gairson's $12,800 in expert fees "don't apply to this case."4 RP10.His attorney told the court that it is appropriate to look to RCW 26.09.140, ability to pay.4 RP 12.

Tatyana pointed out that Mr. Gairson reviewed her entire immigration history, viewed a tremendous number of documents, and simply put more work into the case than did Ms. Siefert, and did a better job, therefore he earned his fee. 4 RP 13.

The trial court found that while Washington law does not compensate parties for the time that they spend preparing their case, expert fees can be compensated. 4 TP 15-16. The court found that the time Mr. Gairson expended on the case was necessary because of Tatyana's

language barrier and the complicated nature of immigration law. 4 RP 16. The court found that his fee of $12,800 is reasonable. Id.

Judge Wickham said that these two factors required Mr. Gairson to spend more time than he normally would on Tatyana's case because she needed to have everything explained in detail and educated as to law so she could understand and bring the information herself to the court. "I understand Ms. Robertson's point that even by his own admission, he spent more time with you than he thought was normal or customary under the circumstances, but I believe that that probably was necessary because of, again, your language barriers and also the complicated nature of this case. It's not as if he was consulting with another attorney; he was consulting with someone who he essentially had to educate as to the law so that you could bring the information yourself to the court." 4 RP15-16.

The judge also noted "[a]nd when I look at all of that, I look at his total fee of $12,800, in the scope of this case, with the degree of adversity presented in this case, I think that it is a reasonable figure. So I will allow that as a cost of litigation." 4 RP 16.

Judge Wickham specifically noted that Mr. Gairson had provided good, credible work in this case: "He clearly presented good evidence for you, and so he was competent at what he did." 4 RP 15.

The court awarded 2/3 of the $12,800 fee to Tatyana based on the

disparity in the parties' financial situations; Tatyana is unemployed and homeless, while John nets roughly $4,500 per month. 4 RP 17.

The court then imposed the remaining 1/3 of the $12,800 amount as a CR 11 sanction based on the declaration filed by John's attorney on July 6th, 2016 which contained statements by John denying that he signed an I-864 affidavit. 4 RP 17. The court read aloud into the record the portions of the declaration wherein John denied the existence of the affidavit and his obligation to support Tatyana (reproduced earlier in this Statement of Relevant Facts). 4 RP 17-18.

The trial court then found that "those statements raise the issue of the existence of the I-864, which is what required this court to have a three-day trial over whether or not that document existed." 4 RP 18. The court specifically noted that while clients are entitled to aggressive advocacy,

> the advocacy in this case presented an untrue presentation to the court which created unnecessary litigation. And I believe that that is a violation of the portion of CR 11 which says that 'the signature of a party or of an attorney constitutes a certificate by the party or attorney that the party or attorney has read the pleading, motion or legal memorandum and that, to the best of the party's or attorney's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, (1) it is well grounded in fact; (2) it is warranted by existing law or a good faith argument, (3) it is not interposed for any improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.' I believe those statements were made for that purpose, and, therefore, I believe CR 11 does apply here.

4 RP 18-19. Mr. Mason's attorney replied, "And there's no consideration that she forged U.S. documents? And we provided proof that she forged –"

4 RP 19. The court at that point reprimanded John's attorney:

> Ms. Robertson, be careful here. You have already pushed this issue farther than you ever should have. Your client and, by extension, you should have known there was an I-864 regardless of what you were looking at, and you put this court and Ms. Mason through three days of trial on that issue.

4 RP 19. Ms. Robertson then began to argue with the court regarding who asked for a hearing on the motion, and the court reprimanded her again:

> This court set the trial itself, if you'll recall, because I was concerned about the issues that you and your client had raised, and I felt there was no way that I could resolve those issues without a trial with witnesses in person. That trial was unnecessary, and it was raised solely because of the allegations that were made that were baseless. This is the end of this hearing.

4 RP 19-20.

D. <u>ARGUMENT</u>

1. COLLATERAL ESTOPPEL CANNOT APPLY IN THIS CASE AS THE ISSUE WAS NOT PRESERVED BELOW, THE ISSUE BEING DETERMINED IN THE CURRENT PROCEEDING HAD NEVER BEEN HEARD BY ANY OTHER COURT AND APPLICATION OF THE DOCTRINE WOULD WORK AN INJUSTICE AGAINST TATYANA

a. The issue was not preserved below, thus it was waived and should not be considered on appeal. John never mentioned collateral estoppel in the proceedings below. A review of his trial brief, trial, opening and closing arguments, and motion for reconsideration show that he never once raised the issue. He did complain repeatedly about the number of court proceedings in the case, but he complained only that Tatyana was harassing him with repeated proceedings; he never complained that they were barred by collateral estoppel.

A party that failed to raise an issue before the trial court is precluded from raising it for the first time on appeal. Seattle-First Nat'l Bank v. Shoreline Concrete Co., 91 Wn.2d 230, 240 (1978); RAP 2.5. Whatever the merits of John's argument which are addressed below, John waived the issue when he failed to object to this evidence at trial when an error, if any exists, may be corrected. ER 103(a); State v. Scott, 110 Wn.2d 682, 757 P.2d 492 (1988). The appellant never raised this issue in the trial court. Consequently, this court should refuse to review it on appeal. RAP 2.5. The rule sets forth exceptions, but none of those exceptions apply in this case. The issue has been waived.

b. The existence, operability, and financial effect of the I-864 had never been heard by any other court, therefore it had never been decided in any earlier proceeding. Collateral estoppel applies to actions where,

among other criteria, "the issue decided in the earlier proceeding was identical to the issue presented in the later proceeding." AOB at 26. Here, the court made it crystal clear that the entire trial centered around the existence, authenticity, and operability of the I-864 affidavit. The court also made a finding, which John has not appealed and which is therefore a verity on appeal, that the I-864 had not been litigated in any prior proceeding.

John's argument that collateral estoppel should apply because Tatyana had an opportunity in prior proceedings to present evidence of the I-864 is inapplicable here. As the trial court made clear in its findings, Tatyana did not understand English when John filed the I-864 and she did not know it existed. He shortly afterward began committing domestic violence against her, including threatening her with deportation. Given John's abusive attitude toward Tatyana as found by the court in 2007. when it found John was committing "acts of control" against Tatyana and that Tatyana was a "disadvantaged spouse," and the 2007's court's entry of a domestic violence protection order against John in 2007, it is completely unrealistic to presume that John would have voluntarily informed her that he had contracted with the United States Government to financially support her. Under these conditions, it is not reasonable to attribute knowledge of the existence of the I-864 affidavit to Tatyana. She

did not have an opportunity to present evidence of the I-864 in the previous proceedings.

c. Application of the doctrine would work an injustice on Tatyana. Neither does this case meet the fourth prong of the collateral estoppel doctrine, "application of collateral estoppel does not work an injustice on the party against whom it is claimed." AOB at 26. John had an independent duty to accurately inform the 2013 court of his true financial position, including his support obligation under the I-864 – a document he signed, had notarized, and filed with the U.S. government - and he failed to do so. He benefitted from his failure to be candid with the 2013 court when it entered the child support order; he therefore comes before this court with unclean hands.

Application of collateral estoppel would work an injustice on Tatyana because it would reward John for having failed to be candid with the 2013 court when it considered child support, to her detriment. Further, application of the doctrine would penalize Tatyana for being, as the 2007 court found her to be, a "disadvantaged spouse subject to John's "acts of control." She did not know about the existence of the I-864 because John was a controlling, abusive spouse who threatened her with deportation; as Judge Wickham found, John had no incentive for supporting Tatyana in her permanent residency. That includes informing her about the existence

of the I-864 and the right to support from him it gave her. John was in control of the information about the I-864 because of Tatyana's nonexistent English and he had no incentive to inform her about it because it would thwart his agenda of control over her. For these reasons, applying collateral estoppel against Tatyana would work an injustice upon her.

There is no clear rule supporting application of collateral estoppel to CR 60(b) motions and this court has found it is unclear whether collateral estoppel can apply at all in the CR 60(b) context. Shandola v. Henry, 198 Wn. App. 889, 902, 396 P.3d 395 (2017). Given John's failure to raise or preserve this issue below, the lack of any previous proceedings regarding the I-864, and the injustice that application of the doctrine would work against Tatyana, this court should decline to apply the doctrine in this case.

2. THE TRIAL COURT ACTED WITHIN ITS DISCRETION BY HEARING TATYANA'S MOTION AS A CR 60(b)(11) MOTION AND RULING IN HER FAVOR

Despite John's attempt to convert this issue into a matter of law requiring *de novo* review, whether to grant a CR 60 motion to vacate is always within the trial court's sound discretion and the trial court's ruling will not be disturbed absent a clear abuse of that discretion. Martin v. Pickering, 85 Wn.2d 241, 245, 533 P.2d 380 (1975); In re Marriage of

Knutson, 114 Wn.App. 866, 871, 60 P.3d 681 (2003); Marriage of Flannagan, 42 Wn. App. 214, 222-23 (1985).

John claims that Judge Wickham made an error of law in converting Tatyana's motion into a CR 60(b)(11) motion; yet among the voluminous boilerplate in his brief he offers no case supporting this position. All of his arguments on the CR 60(b)(11) proceeding boil down to disagreements with how Judge Wickham exercised his discretion. As a recent case from this division of the Court explained,

> Finality of judgments is a central value in the legal system, but circumstances can arise where finality must give way to the greater value that justice be done. Union Bank, NA v. Vanderhoek Assocs, 191 Wn. App. 836, 846, 365 P.3d 223 (2015). CR 60(b) provides a balance between finality and fairness by listing limited circumstances under which a judgment may be vacated. Id. quoting Suburban Janitorial Servs. v. Clarke Am., 72 Wn. App. 302, 313, 863 P.2d 1377 (1993). CR 60(b)(11) states that the court may grant relief from a final judgment for "[a]ny other reason justifying relief from the operation of the judgment." This is a catchall provision intended to serve the ends of justice in extreme, unexpected situations and when no other subsection of CR 60(b) applies. In re Det. Of Ward, 125 Wn. App. 374, 379, 104 P.3d 751 (2005).

Shandola v. Henry, 198 Wn. App. 889, 895, 396 P.3d 395 (2017) (Emphasis added). As this Court held in Shandola, it can be an abuse of discretion to fail to vacate an order under Cr 60(b)(11) when there are extraordinary circumstances requiring relief. Id. at 906. And as shown by the trial court's observation that in 25 years of being a court commissioner

and trial judge, the court had never before found a basis to vacate a court order under (b)(11), this case presents extraordinary circumstances.

Abundant evidence supports the trial court's discretionary decisions in this CR 60(b)(11) proceeding and the trial court took painstaking care to document the extraordinary circumstances present in this case. Tatyana came to this country to become John's wife, but she became his victim as he abused and threatened her, and as he failed to take the proper steps to follow through on obtaining her permanent residence status. Not knowing English, not having friends or family here, not having money of her own, she was in a position of extreme vulnerability. As the exhibits show, all documents relating to her residency status, including the I-864, are in English and she was entirely at John's mercy regarding the process. John chose to let Tatyana's residency lapse out of its good standing and there was really nothing she could do about it; she did not even know about it because John was the one who understood English.

Similarly, John continued to take advantage of Tatyana in the divorce and modification cases, repeatedly failing to disclose to the court or to Tatyana in any proceeding his obligation to financially support Tatyana. He attempted to further his abuse of Tatyana in this hearing by repeatedly denying having signed the I-864 and accusing Tatyana of forgery, and attempting to distract the court with spurious claims about

DOJ stamps. As Judge Wickham told John and his attorney, "[y]our client and, by extension, you should have known there was an I-864 regardless of what you were looking at." 4 RP 19. The CR 11 sanctions are a finding that John made an "untrue presentation to the court" regarding the existence of the I-864 and his consequent obligation to support Tatyana.

John's dishonesty over a period of many years placed Tatyana in a situation where she is, as the court found, "unemployed and homeless." 4 RP 17. He hid the I-864 from the 2013 court when it calculated child support and because Tatyana had no understanding of English when John filed the I-864 and no independent way to find out what was going on, Tatyana could not have known that the I-864 existed. Under these circumstances, Tatyana presented the I-864 to the trial court and moved for relief in a "reasonable time." In contrast, John knowingly permitted the 2013 court to enter a child support order without the benefit of accurate financial information.

These circumstances alone could be substantial enough to vacate the child support order. But the child support order created a situation where Tatyana was quickly in arrears; since she was not receiving from John the financial support he owed her under the I-864, she could not pay the ordered child support. As Tatyana and her friend Stacy Simpson testified, the child support then became a barrier to regularizing her

residence, and prevented her from working. Because she could not work, she could not pay off the arrears; and because of the arrears, she could not get a job. The trial court acted within its discretion in determining that these extraordinary circumstances warranted application of CR 60(b)(11).

3. THE TRIAL COURT'S FINDINGS THAT TATYANA IS UNABLE TO OBTAIN WORK BECAUSE OF HER IMMIGRATION STATUS AND THAT HER CHILD SUPPORT ARREARS ARE PREVENTING HER FROM FIXING HER STATUS ARE SUPPORTED BY SUBSTANTIAL EVIDENCE.

Where John claims that the evidence contradicts the trial courts findings, the reality is that he simply disagrees with the credibility calls the trial court made. Tatyana and another witness testified regarding Tatyana's inability to find work despite repeated efforts, and that this inability is because her residence status has not been rectified. No evidence was presented to contradict their testimony. Mr. Gairson testified that it is very difficult to practically impossible to find work when one's immigration status is listed as non-employable in the government's E-VERIFY system. The trial court chose to find Tatanya, Mr. Gairson, and Tatanya's friend Stacy credible on this issue, as the court is entitled to do.

This court "defers to the trier of fact for resolution of conflicting testimony, evaluation of the evidence's persuasiveness, and assessment of the witnesses' credibility." In re G.W.F., 170 Wn. App. 631, 637, 285 P.3d

208 (2012). Credibility determinations are for the trier of fact and are not subject to appellate review. McCallum v. Allstate Property and Cas. Ins. Co., 149 W. App. 412 (2009). "Appellate courts do not weigh evidence or assess credibility. It is the sole province of the trier of fact to pass on the weight and credibility of evidence." Boeing Co. v. Heidy, 147 Wn.2d 78, 87 (2002). Only the finder of fact can assess the persuasiveness of the evidence and resolve conflicts in the testimony. State v. Asaeli, 150 Wn. App. 543 (2009).

Similarly, John relies heavily in his brief on the evidence provided by his expert, Lisa Seifert, in whom the trial court chose not to place credibility, arguing that the trial court should have placed credibility in her testimony rather than that of Mr. Gairson. Mr. Mason argues on appeal that, according to Ms. Siefert, it would have been extremely easy for Ms. Mason to rectify her residence status, and that her current status is no bar at all to employment. AOB at 21. Ms. Siefert glibly opined that the child support arrears present no problem for Tatanya regarding removing her conditions. AOB at 21. Ms. Siefert maintained the implausible position that Tatyana's two week trip to the Ukraine for her mother's funeral was a "permanent departure" from the U.S. such that John was no longer required to support her under the I-864. 2 RP 222.

Such arguments fail on appeal; because the trial court chose to find

Ms. Siefert less credible than Mr. Gairson, the trial court was entitled to adopt Mr. Gairson's expert analysis of Tatyana's immigration situation and its consequences. Indeed, the court would have been foolish not to adopt Mr. Gairson's analysis. Mr. Gairson analyzed Tatyana's immigration in far more detail than did Ms. Siefert, he referred to many specific statutes and assisted the court by pointing out the applicable language in each. In contrast, Ms. Siefert was unable to back up her opinions with authority. The court asked Ms. Seifert for authority for her theory that Mr. Mason's income would be credited to Ms. Mason to reach the 40 credits needed for his support obligation to terminate and Ms. Siefert was unable to provide any authority at all. 2 RP 222. Similarly, Ms. Seifert was unable to articulate a basis for her belief that John's support obligation had ended other than "based on my knowledge of the immigration law and what I understand how the Social Security law impacts that," and "it makes sense." 2 RP 224.

Ms. Siefert was forced to admit that her declared opinion that the I-864 was a forgery was based on her failure to properly understand the timeframe for the Department of Homeland Security taking over immigration functions. 1 RP 52, 55, 66. Taken as a whole, there was abundant evidence supporting the trial court's decision to adopt Mr. Gairson's analysis. Mr. Gairson's evidence was simply more persuasive.

This is not subject to review.

4. THE COURT CORRECTLY DENIED RECONSIDERATION

John's reconsideration strategy rested largely on portraying the trial court's discretionary decisions as errors of law and disputing the court's credibility determinations, as does his appeal. AOB at 38. As discussed above, no errors of law were made; this was a highly fact-specific case and all the decisions made by the trial court were based on credibility determinations regarding both lay and expert witnesses.

Whether or not Judge Wickham found the I-864 to be enforceable in an immigration proceeding is irrelevant, since Tatanya did not seek to have the I-864 enforced by way of the CR 60(b)(11) motion and that issue is being separately determined in immigration court. What Judge Wickham properly found was that the 2013 court could not make a proper child support determination without having the I-864 before it, and that the series of events that led to the 2013 court entering the order without the I-864 constitutes extraordinary circumstances. Moreover, there is no need to strike the court's finding of domestic violence because the court was simply taking notice of the finding of a previous court.

5. THE COURT'S AWARD OF EXPERT FEES AND THE CR 11 SANCTION ARE WELL WITHIN ITS DISCRETION

As John admits, fee and cost awards are subject to review only for abuse of discretion. Marriage of Bobbitt, 135 Wn.App. 8, 29-30, 144 P.3d 306 (2006). John argues on appeal that it is not proper to award expert costs to a *pro se* litigant, but fails to provide any authority for this proposition. If a party fails to support assignments of error with legal arguments, they will not be considered on appeal. Howell v. Spokane & Inland Empire Blood Bank, 117 Wn.2d 619, 624, 818 P.2d 1056 1058 (1991). RAP 10.3(a)(6) requires the appellant to provide "argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record." This Court should therefore strike his argument on this point.

Regarding need, the court was well within its discretion in finding that Tatyana was homeless, unemployed and penniless; evidence had been presented by Tatyana and her friend Stacy establishing these facts and the court is empowered to choose to believe testimony it finds credible. Similarly, John testified that he had been steadily employed for 26 years doing web management and graphic design for the WA State legislature. 3 RP 337. While John apparently finds the court's finding that he can pay the awarded fees unpalatable, he does not dispute the accuracy of the court's statement that he nets approximately $4,500 per month, not taking into account deductions, if any, for child care costs. AOB at 43. Given this

radical disparity in income, the court's finding of need is a proper basis upon which to assess expert fees.

The trial court exercised its sound discretion in awarding CR 11 sanctions. As John notes, such sanctions are reviewed only for abuse of discretion. Biggs v. Vall, 124 Wn.2d 193, 878 P.2d 448 1994). The court must specify the sanctionable conduct in its order. N. Coast Elec. Co., v. Selig, 136 Wn. App. 636, 649, 161 P.3d 211 (2007). A trial court may consider whether additional legal fees were caused by one party's intransigence and award attorney fees on that basis. In re Marriage of Raskob, 183 Wn. App. 503, 518, 334 P.3d 30 (2014). Awards of attorney fees based upon the intransigence of one party have been granted when the party engaged in 'foot-dragging' and 'obstruction' ... or simply when one party made the trial unduly difficult and increased legal costs by his or her actions." Id. The trial court knows the tenor of the litigation and is in the best position to determine whether facts exist to impose sanctions. Miller v. Badgley, 51 Wn.App. 285, 300-01, 753 P.2d 530 (1988).

[T]he sanction rules are "designed to confer wide latitude and discretion upon the trial judge to determine what sanctions are proper in a given case and to reduce the reluctance of courts to impose sanctions..." Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993). The abuse of discretion standard

"recognizes that deference is owed to the judicial actor who is 'better positioned than another to decide the issue in question.'" Id.

Here, the trial court went to great lengths to specify the sanctionable conduct in its oral ruling, reading into the record the portions of John's declaration in which he denied the existence of the I-864 he himself had signed, had notarized, and filed with the U.S. government (reproduced earlier in this Statement of Relevant Facts). 4 RP 17-18. The trial court then specified that "those statements raise the issue of the existence of the I-864, which is what required this court to have a three-day trial over whether or not that document existed." 4 RP 18 (Emphasis added). When John's attorney persisted yet again, during the sanctions ruling itself, in claiming that Tatyana had forged the I-864, the court warned his attorney:

> Ms. Robertson, be careful here. You have already pushed this issue farther than you ever should have. Your client and, by extension, you should have known there was an I-864 regardless of what you were looking at, and you put this court and Ms. Mason through three days of trial on that issue.

4 RP 19. The court could hardly have made it clearer that John had caused Tatyana to waste money on an expert, to waste her time on an unnecessary trial, and had wasted three days worth of Thurston County's judicial resources. The CR 11 sanction award is well within the court's discretion.

6. THIS COURT SHOULD AWARD FEES BASED ON NEED TO TATYANA

Pursuant To RAP 18.1, a party may recover attorney fees and costs at trial and on appeal when granted by applicable law. RCW 26.09.140 provides for an award of fees and expenses in family law cases, including attorneys' fees or other professional fees, based upon the requesting party's financial need and the opposing party's ability to pay. Although no attorney has appeared in Tatyana's behalf in this appeal, Tatyana has had to incur professional fees for English language assistance in writing the brief, and limited legal advice and assistance of an attorney to help Tatyana defend John's appeal. These expenses qualify under the statute. Tatyana will file an affidavit of need and required by Rap 18.1 more than ten days before oral argument. Under Rap 18.1 and RCW 26.09.140 this Court should award these costs and fees to Tatyana.

7. THIS COURT SHOULD AWARD FEES BASED ON RAP18.9 FRIVILOUS APPEAL

John's appeal is essentially factual and devoid of merit. Over half of his brief is spent detailing his disagreement with the trial court's findings, hoping this Court will substitute its own judgment for the trial court's findings. This Court cannot do that. John attempts to apply issue preclusion without ever showing that the issue—the I-864 affidavit—was ever actually litigated in any earlier proceeding. John disagrees with the

trial court decision, but cannot show any abuse of discretion. The trial court's findings were supported by substantial evidence and its conclusions were supported by the findings. John's appeal presents no reasonable possibility of reversal. This Court should affirm the trial court decision and impose sanctions against John and his counsel under RAP 18.9 for filing a frivolous appeal. Clarke v. Equinox Holdings, Ltd., 56 Wn.App. 125, 132, 783 P.2d 82 (1989); Streater v. White, 26 Wn.App. 430, 434-35, 613 P.2d 187 (1980).

E. CONCLUSION

For all the foregoing reasons, this CR 60(b)(11) case consists entirely of decisions that are well within the trial court's discretion. There are no legal issues in this case. The expert and CR 11 awards were well-grounded and supported by substantial evidence. This case should not be disturbed on appeal.

DATED this 5th day of December, 2017.

Respectfully submitted:

Tatyana Mason
Respondent pro-se

USCIS Freedom Of Information Act Letter to **Tatyana**

I-864 Form Affidavit Of Support

EXHIBITS A

U.S. Department of Homeland Security
National Records Center
P.O. Box 648010
Lee's Summit, MO 64064-8010

U.S. Citizenship and Immigration Services

July 7, 2016

NRC2016071460

Tatyana Ivanorna Mason
P.O. Box 6441
Olympia, WA 98507

Ex, 33.

Dear Tatyana Ivanorna Mason:

This is in response to your Freedom of Information Act/Privacy Act (FOIA/PA) request received in this office June 02, 2016 regarding a copy of the I-864, I-134 and supporting documents submitted on your behalf.

We have completed our search for records that are responsive to your request. The record consists of 55 pages of material and we have determined to release it in full. The enclosed record consists of the best reproducible copies available.

Documents responsive to your request may contain discretionary releases of exempt information. If made, these releases are specifically identified in the responsive record. These discretionary releases do not waive our ability to invoke applicable FOIA exemptions for similar or related information in the future.

The National Records Center does not process petitions, applications or any other type of benefit under the Immigration and Nationality Act. If you have questions or wish to submit documentation relating to a matter pending with the bureau, you must address these issues with your nearest District Office.

All FOIA/PA related requests, including address changes, must be submitted in writing and be signed by the requester. Please include the control number listed above on all correspondence with this office. Requests may be mailed to the FOIA/PA Officer at the PO Box listed at the top of the letterhead, or sent by fax to (816) 350-5785. You may also submit FOIA/PA related requests to our e-mail address at uscis.foia@uscis.dhs.gov.

Sincerely,

Jill A. Eggleston
Director, FOIA Operations

Enclosure(s)

Ex. 33

U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-0214

Affidavit of Support under Section 213A of the Act

START HERE - Please Type or Print

Part 1. Information on Sponsor (You)

Last Name: MASON	First Name: JOHN	Middle Name: ARTHUR
Mailing Address (Street Number and Name): 9640 MULLEN RD SE		Apt/Suite Number: —
City: OLYMPIA		State or Province: WA
Country: USA		Zip/Postal Code: 98513
		Telephone Number: (360)491-5279

Place of Residence if different from above (Street Number and Name)		Apt/Suite Number
City		State or Province
Country	Zip/Postal Code	Telephone Number
Date of Birth (Month, Day, Year): 5, 16, 59	Place of Birth (City, State, Country): SEATTLE WA USA	Are you a U.S. Citizen? ☒ Yes ☐ No
Social Security Number: 541-58-2213	A-Number (If any)	

FOR AGENCY USE ONLY

This Affidavit
[✓] Meets
[ ] Does not meet
Requirements of Section 213A

Officer's Signature: Hezekiah Orji
District Adjudications Officer
Location: Seattle, Washington
28 OCT 1999
Date

Receipt

Part 2. Basis for Filing Affidavit of Support

I am filing this affidavit of support because (check one):

a. ☐ I filed/am filing the alien relative petition.

b. ☐ I filed/am filing an alien worker petition on behalf of the intending immigrant, who is related to me as my _____ (relationship).

c. ☐ I have ownership interest of at least 5% of _____ (name of entity which filed visa petition) which filed an alien worker petition on behalf of the intending immigrant, who is related to me as my _____ (relationship).

d. ☐ I am a joint sponsor willing to accept the legal obligations with any other sponsor(s).

Part 3. Information on the Immigrant(s) You Are Sponsoring

Last Name: MASON (PARHOMENKO)	First Name: TATYANA	Middle Name: IVANOVNA
Date of Birth (Month, Day, Year): 2, 11, 67	Sex: ☐ Male ☒ Female	Social Security Number (If any)
Country of Citizenship: MOLDOVA		A-Number (If any): A 77434356
Current Address (Street Number and Name): 9640 MULLEN RD SE	Apt/Suite Number: —	City: OLYMPIA
State/Province: WA	Country: USA	Zip/Postal Code: 98513
		Telephone Number: (360) 491-5279

List any spouse and/or children immigrating with the immigrant named above in this Part: (Use additional sheet of paper if necessary.)

Name	Relationship to Sponsored Immigrant			Date of Birth			A-Number (If any)	Social Security Number (If any)
	Spouse	Son	Daughter	Mo.	Day	Yr.		
NONE								

Form I-864 (1/21/98)Y

Part 4. Eligibility to Sponsor

To be a sponsor you must be U.S. citizen or national or lawful permanent resident. If you are not the petitioning relative, you must provide proof of status. To prove status, U.S. citizens or nationals must attach a copy of a document proving status, such as a U.S. passport, birth certificate, or certificate of naturalization, and lawful permanent residents must attach a copy of both sides of their Alien Registration Card (Form I-551).

The determination of your eligibility to sponsor an immigrant will be based on an evaluation of your demonstrated ability to maintain an annual income at or above 125 percent of the Federal poverty line (100 percent if you are a petitioner sponsoring your spouse or child and you are on active duty in the U.S. Armed Forces). The assessment of your ability to maintain an adequate income will include your current employment, household size, and household income as shown on the Federal income tax returns for the 3 most recent tax years. Assets that are readily converted to cash and that can be made available for the support of sponsored immigrants if necessary, including any such assets of the immigrant(s) you are sponsoring, may also be considered.

The greatest weight in determining eligibility will be placed on current employment and household income. If a petitioner is unable to demonstrate ability to meet the stated income and asset requirements, a joint sponsor who can meet the income and asset requirements is needed. Failure to provide adequate evidence of income and/or assets or an affidavit of support completed by a joint sponsor will result in denial of the immigrant's application for an immigrant visa or adjustment to permanent resident status.

A. Sponsor's Employment

I am:

1. ☒ Employed by WA ST HOUSE OF REPRESENTATIVES *(provide evidence of employment)*
   Annual salary $39,864.00 *or* hourly wage $ _____ *(for* _____ *hours per week)*
2. ☐ Self employed _____ *(Name of business)*
   Nature of employment or business _____
3. ☐ Unemployed or retired since _____

B. Use of Benefits

Have you or anyone related to you by birth, marriage, or adoption living in your household or listed as a dependent on your most recent income tax return received any type of means-tested public benefit in the past 3 years?

☐ Yes ☒ No *(If yes, provide details, including programs and dates, on a separate sheet of paper)*

C. Sponsor's Household Size

		Number
1.	Number of persons (related to you by birth, marriage, or adoption) living in your residence, including yourself. *(Do NOT include persons being sponsored in this affidavit.)*	1
2.	Number of immigrants being sponsored in this affidavit *(Include all persons in Part 3.)*	1
3.	Number of immigrants **NOT** living in your household whom you are still obligated to support under a previously signed affidavit of support using Form I-864.	0
4.	Number of persons who are otherwise dependent on you, as claimed in your tax return for the most recent tax year.	0
5.	Total household size. ***(Add lines 1 through 4.)*** **Total**	2

List persons below who are included in lines 1 or 3 for whom you previously have submitted INS Form I-864, *if your support obligation has not terminated.*

(If additional space is needed, use additional paper)

Name	A-Number	Date Affidavit of Support Signed	Relationship
NONE			

D. Sponsor's Annual Household Income

Enter total unadjusted income from your Federal income tax return for the most recent tax year below. If you last filed a joint income tax return but are using only your *own* income to qualify, list total earnings from your W-2 Forms, or, *if* necessary to reach the required income for your household size, include income from other sources listed on your tax return. If your *individual* income does not meet the income requirement for your household size, you may also list total income for anyone related to you by birth, marriage, or adoption currently living with you in your residence if they have lived in your residence for the previous 6 months, or any person shown as a dependent on your Federal income tax return for the most recent tax year, even if not living in the household. For their income to be considered, household members or dependents must be willing to make their income available for support of the sponsored immigrant(s) and to complete and sign Form I-864A, Contract Between Sponsor and Household Member. A sponsored immigrant/household member only need complete Form I-864A if his or her income will be used to determine your ability to support a spouse and/or children immigrating with him or her.

You must attach evidence of current employment and copies of income tax returns as filed with the IRS for the most recent 3 tax years for yourself and all persons whose income is listed below. See "Required Evidence" in Instructions. Income from all 3 years will be considered in determining your ability to support the immigrant(s) you are sponsoring.

- ☒ I filed a single/separate tax return for the most recent tax year.
- ☐ I filed a joint return for the most recent tax year which includes only my own income.
- ☐ I filed a joint return for the most recent tax year which includes income for my spouse and myself.
  - ☐ I am submitting documentation of my individual income (Form W-2 and 1099).
  - ☐ I am qualifying using my spouse's income; my spouse is submitting a Form I-864A.

Indicate most recent tax year	1998 *(tax year)*
Sponsor's individual income	$ 36,681.23
or	
Sponsor and spouse's combined income *(If joint tax return filed; spouse must submit Form I-864A.)*	$
Income of other qualifying persons. *(List names; include spouse if applicable. Each person must complete Form I-864A.)*	
	$
	$
	$
Total Household Income	$ 36,681.23

Explain on separate sheet of paper if you or any of the above listed individuals are submitting Federal income tax returns for fewer than 3 years, or if other explanation of income, employment, or evidence is necessary.

E. Determination of Eligibility Based on Income

1. ☒ I am subject to the 125 percent of poverty line requirement for sponsors.
   ☐ I am subject to the 100 percent of poverty line requirement for sponsors on active duty in the U.S. Armed Forces sponsoring their spouse or child.
2. Sponsor's total household size, from Part 4.C., line 5 2.
3. Minimum income requirement from the Poverty Guidelines chart for the year of 1998 *(year)* is $ 13,562.00 for this household size.

If you are currently employed and your household income for your household size is equal to or greater than the applicable poverty line requirement (from line E.3.), you do not need to list assets (Part 4.F. and 5) or have a joint sponsor (Part 6) unless you are requested to do so by a Consular or Immigration Officer. You may skip to Part 7, Use of the Affidavit of Support to Overcome Public Charge Ground of Admissibility. **Otherwise, you should continue with Part 4.F.**

Part 4. Eligibility to Sponsor *(Continued)*

F. Sponsor's Assets and Liabilities

Your assets and those of your qualifying household members and dependents may be used to demonstrate ability to maintain an income at or above 125 percent (or 100 percent, if applicable) of the poverty line *if* they are available for the support of the sponsored immigrant(s) and can readily be converted into cash within 1 year. The household member, other than the immigrant(s) you are sponsoring, must complete and sign Form I-864A, Contract Between Sponsor and Household Member. List the cash value of each asset *after* any debts or liens are subtracted. Supporting evidence must be attached to establish location, ownership, date of acquisition, and value of each asset listed, including any liens and liabilities related to each asset listed. See "Evidence of Assets" in Instructions.

Type of Asset	Cash Value of Assets *(Subtract any debts)*
Saving deposits	$
Stocks, bonds, certificates of deposit	$
Life insurance cash value	$
Real estate	$
Other *(specify)*	$
Total Cash Value of Assets	$_____

Part 5. Immigrant's Assets and Offsetting Liabilities

The sponsored immigrant's assets may also be used in support of your ability to maintain income at or above 125 percent of the poverty line *if* the assets are or will be available in the United States for the support of the sponsored immigrant(s) and can readily be converted into cash within 1 year.

The sponsored immigrant should provide information on his or her assets in a format similar to part 4.F. above. Supporting evidence must be attached to establish location, ownership, and value of each asset listed, including any liens and liabilities for each asset listed. See "Evidence of Assets" in Instructions.

Part 6. Joint Sponsors

If household income and assets do not meet the appropriate poverty line for your household size, a joint sponsor is required. There may be more than one joint sponsor, but each joint sponsor must individually meet the 125 percent of poverty line requirement based on his or her household income and/or assets, including any assets of the sponsored immigrant. By submitting a separate Affidavit of Support under Section 213A of the Act (Form I-864), a joint sponsor accepts joint responsibility with the petitioner for the sponsored immigrant(s) until they become U.S. citizens, can be credited with 40 quarters of work, leave the United States permanently, or die.

Part 7. Use of the Affidavit of Support to Overcome Public Charge Ground of Inadmissibility

Section 212(a)(4)(C) of the Immigration and Nationality Act provides that an alien seeking permanent residence as an immediate relative (including an orphan), as a family-sponsored immigrant, or as an alien who will accompany or follow to join another alien is considered to be likely to become a public charge and is inadmissible to the United States unless a sponsor submits a legally enforceable affidavit of support on behalf of the alien. Section 212(a)(4)(D) imposes the same requirement on employment-based immigrant, and those aliens who accompany or follow to join the employment-based immigrant, if the employment-based immigrant will be employed by a relative, or by a firm in which a relative owns a significant interest. Separate affidavits of support are required for family members at the time they immigrate if they are not included on this affidavit of support or do not apply for an immigrant visa or adjustment of status within 6 months of the date this affidavit of support is originally signed. The sponsor must provide the sponsored immigrant(s) whatever support is necessary to maintain them at an income that is at least 125 percent of the Federal poverty guidelines.

I submit this affidavit of support in consideration of the sponsored immigrant(s) not being found inadmissible to the United States under section 212(a)(4)(C) (or 212(a)(4)(D) for an employment-based immigrant) and to enable the sponsored immigrant(s) to overcome this ground of inadmissibility. I agree to provide the sponsored immigrant(s) whatever support is necessary to maintain the sponsored immigrant(s) at an income that is at least 125 percent of the Federal poverty guidelines. I understand that my obligation will continue until my death or the sponsored immigrant(s) have become U.S. citizens, can be credited with 40 quarters of work, depart the United States permanently, or die.

Notice of Change of Address.

Sponsors are required to provide written notice of any change of address within 30 days of the change in address until the sponsored immigrant(s) have become U.S. citizens, can be credited with 40 quarters of work, depart the United States permanently, or die. To comply with this requirement, the sponsor must complete INS Form I-865. Failure to give this notice may subject the sponsor to the civil penalty established under section 213A(d)(2) which ranges from $250 to $2,000, unless the failure to report occurred with the knowledge that the sponsored immigrant(s) had received means-tested public benefits, in which case the penalty ranges from $2,000 to $5,000.

If my address changes for any reason before my obligations under this affidavit of support terminate, I will complete and file INS Form I-865, Sponsor's Notice of Change of Address, Within 30 days of the change of address. I understand that failure to give this notice may subject me to civil penalties.

Means-tested Public Benefit Prohibitions and Exceptions.

Under section 403(a) of Public Law 104-193 (Welfare Reform Act), aliens lawfully admitted for permanent residence in the United States, with certain exceptions, are ineligible for most Federally-funded means-tested public benefits during their first 5 years in the United States. This provision does not apply to public benefits specified in section 403(c) of the Welfare Reform Act or to State public benefits, including emergency Medicaid; short-term, non-cash emergency relief; services provided under the National School Lunch and Child Nutrition Acts; immunizations and testing and treatment for communicable diseases; student assistance under the Higher Education Act and the Public Health Service Act; certain forms of foster-care or adoption assistance under the Social Security Act; Head Start programs; means-tested programs under the Elementary and Secondary Education Act; and Job Training Partnership Act programs.

Consideration of Sponsor's Income in Determining Eligibility for Benefits.

If a permanent resident alien is no longer statutorily barred from a Federally-funded means-tested public benefit program and applies for such a benefit, the income and resources of the sponsor and the sponsor's spouse will be considered (or deemed) to be the income and resources of the sponsored immigrant in determining the immigrant's eligibility for Federal means-tested public benefits. Any State or local government may also choose to consider (or deem) the income and resources of the sponsor and the sponsor's spouse to be the income and resources of the immigrant for the purposes of determining eligibility for their means-tested public benefits. The attribution of the income and resources of the sponsor and the sponsor's spouse to the immigrant will continue until the immigrant becomes a U.S. citizen or has worked or can be credited with 40 qualifying quarters of work, provided that the immigrant or the worker crediting the quarters to the immigrant has not received any Federal means-tested public benefit during any creditable quarter for any period after December 31, 1996.

I understand that, under section 213A of the Immigration and Nationality Act (the Act), as amended, this affidavit of support constitutes a contract between me and the U.S. Government. This contract is designed to protect the United States Government, and State and local government agencies or private entities that provide means-tested public benefits, from having to pay benefits to or on behalf of the sponsored immigrant(s), for as long as I am obligated to support them under this affidavit of support. I understand that the sponsored immigrants, or any Federal, State, local, or private entity that pays any means-tested benefit to or on behalf of the sponsored immigrant(s), are entitled to sue me if I fail to meet my obligations under this affidavit of support, as defined by section 213A and INS regulations.

Civil Action to Enforce.

If the immigrant on whose behalf this affidavit of support is executed receives any Federal, State, or local means-tested public benefit before this obligation terminates, the Federal, State, or local agency or private entity may request reimbursement from the sponsor who signed this affidavit. If the sponsor fails to honor the request for reimbursement, the agency may sue the sponsor in any U.S. District Court or any State court with jurisdiction of civil actions for breach of contract. INS will provide names, addresses, and Social Security account numbers of sponsors to benefit-providing agencies for this purpose. Sponsors may also be liable for paying the costs of collection, including legal fees.

Part 7. Use of the Affidavit of Support to Overcome Public Charge Grounds *(Continued)*

I acknowledge that section 213A(a)(1)(B) of the Act grants the sponsored immigrant(s) and any Federal, State, local, or private agency that pays any means-tested public benefit to or on behalf of the sponsored immigrant(s) standing to sue me for failing to meet my obligations under this affidavit of support. I agree to submit to the personal jurisdiction of any court of the United States or of any State, territory, or possession of the United States if the court has subject matter jurisdiction of a civil lawsuit to enforce this affidavit of support. I agree that no lawsuit to enforce this affidavit of support shall be barred by any statute of limitations that might otherwise apply, so long as the plaintiff initiates the civil lawsuit no later than ten (10) years after the date on which a sponsored immigrant last received any means-tested public benefits.

Collection of Judgment.

I acknowledge that a plaintiff may seek specific performance of my support obligation. Furthermore, any money judgment against me based on this affidavit of support may be collected through the use of a judgment lien under 28 U.S.C. 3201, a writ of execution under 28 U.S.C. 3203, a judicial installment payment order under 28 U.S.C. 3204, garnishment under 28 U.S.C. 3205, or through the use of any corresponding remedy under State law. I may also be held liable for costs of collection, including attorney fees.

Concluding Provisions.

I, JOHN A MASON *, certify under penalty of perjury under the laws of the United States that:*

(a) I know the contents of this affidavit of support signed by me;
(b) All the statements in this affidavit of support are true and correct;
(c) I make this affidavit of support for the consideration stated in Part 7, freely, and without any mental reservation or purpose of evasion;
(d) Income tax returns submitted in support of this affidavit are true copies of the returns filed with the Internal Revenue Service; and
(e) Any other evidence submitted is true and correct.

John A Mason — *(Sponsor's Signature)*

9-2-99 — *(Date)*

John A Mason

Subscribed and sworn to *(or affirmed)* before me this 3RD day of SEPTEMBER *(Month)*, 1999 *(Year)*

at OLYMPIA WASHINGTON,

My commission expires on OCTOBER 1 2000

Notary Public
State of Washington
DENNIS W. SCHLENZ
My Appointment Expires Oct. 1, 2000

Dennis W Schlenz
(Signature of Notary Public or Officer Administering Oath)

NOTARY PUBLIC
(Title)

Part 8. If someone other than the sponsor prepared this affidavit of support, that person must complete the following:

I certify under penalty of perjury under the laws of the United States that I prepared this affidavit of support at the sponsor's request, and that this affidavit of support is based on all information of which I have knowledge.

Signature	Print Your Name	Date	Daytime Telephone Number

Firm Name and Address

Protection Order against John Mason

Safe Place Letter

EXHIBITS B

THURSTON COUNTY SUPERIOR COURT

FRIDAY, AUGUST 3, 2007
DOMESTIC VIOLENCE CALENDAR 9:00 A.M.

COURT COMMISSIONER LYNN HAYES
ROXANNE MOULTON, CLERK
DIGITAL RECORDING DEVICE

Underlined Parties Present at Hearing

[redacted] (CONTINUED 2 OF 2)

[redacted]

MASON, TATYANA ET AL
VS
MASON, JOHN A

KRATZ, PHILIP L

ROBERTSON, LAURIE

PROTECTION ORDER

Court's Ruling: The Court finds that the petitioner's testimony was credible. The Court finds that Domestic Violence has been committed. The Court finds that there have been acts of control by Mr. Mason. Ms. Mason is a disadvantaged spouse. Mr. Mason's testimony was not credible. The Court stated concern about secreting the children. There is a family law matter scheduled, so the Court would not address the issue of a Parenting Plan at this time. The Court finds that Mr. Mason should be restrained from contacting the petitioner. The Court restrained him from going within a mile of the petitioner. The house is his separate property, so he is restrained until there is ruling in the domestic case.

Court signed: *"Order for Protection"*

SCANNED

SafePlace

Ex 14.

February 12th, 2009

To Whom It May Concern:

This letter is to verify that Tatyana I. Mason (DOB 02-11-67) has been accessing SafePlace services since July of 2001. Tatyana is accessing SafePlace services for ongoing support, education, and connection to community and legal resources that will help her to remove herself and her children from an abusive situation.

Tatyana has sought support from this agency throughout the length of her marriage. She has reported ongoing physical and verbal abuse, threats of deportation, threats to take her children away, states her husband has told her that she has no rights in this country, and has also reported ongoing financial manipulation and control.

When reviewing Mrs. Mason's file it is evident that she is first and foremost concerned about the welfare of her children. She routinely states her desire to be free of the abusive relationship, but cites ongoing fears of losing her children. The statements that Tatyana has made also show evidence that her immigration status has routinely been used against her, a common technique used by perpetrators to insure a victim of domestic violence believes that they have no rights.

Mrs. Mason's contact with SafePlace shows ongoing incidents of domestic violence over a span of 6 years. As an advocate, it is my greatest wish that the court will make the decision to insure that these children can grow up in a home that is free from violence.

I declare, under penalty of perjury, that the above statements are true and correct to the best of my knowledge.

Trisha Smith

SafePlace Residential Services Director

USCIS Freedom Of Information Act Letter to **John Mason**

John did not request I-864 Form from FOIA as the court directed, instead John requested I-129 and I-130 (none premarital 90 days tourist visa)

EXHIBITS C

U.S. Department of Homeland Security
National Records Center
P.O. Box 648010
Lee's Summit, MO 64064-8010

U.S. Citizenship and Immigration Services

June 2, 2016

NRC2016071417

John Arthur Mason
9640 Mullen Rd. SE
Olympia, WA 98513

Ex 80.

Dear John Arthur Mason:

This is in response to your Freedom of Information Act/Privacy Act (FOIA/PA) request received in this office June 02, 2016 regarding Tatyana Ivanovna Mason.

After carefully considering your request, we must deny it in its entirety pursuant to 5 U.S.C. § 552(b)(6) (Exemption 6). It is the policy of USCIS to file any adjudicated petitions, such as the Form I-129F or Form I-130, in the beneficiary's record. Beneficiary consent is required to obtain any petitions from their record.

In order to obtain these records your request must demonstrate one or more of the following criteria:

- Written authorization from the individual(s) permitting disclosure of the records to you, which consists of a written statement from the records' subject(s) stating his/her full name, current address, and date and place of birth. Additionally, the written statement must be signed by the records' subject(s) and the signature must either be notarized or signed under penalty of perjury; or
- Proof of parentage with the requester's verification of identity if the subject of record is a minor at the time of the request, or
- Proof of court appointed guardianship with the requester's verification of identity, or
- Proof that the subject [or subjects of your request [is] [are] deceased, or
- A clear demonstration that the public interest in disclosure outweighs the personal privacy interest(s) of the individual(s) and that significant public benefit would result from the disclosure of the requested records.

Your request did not satisfy any of the above criteria. Where a FOIA requester seeks information about individuals in personnel, medical, and similar files FOIA Exemption (6) protects from disclosure information that, if released, would constitute a clearly unwarranted invasion of personal privacy. To determine whether the disclosure of personal information would constitute an unwarranted invasion of personal privacy, Exemption 6 requires the government to balance the privacy interests of individuals that would be compromised by disclosure of government records about them against the public interest in release of the records. The only relevant public interest to be considered is the extent to which the requested information sheds light on the agency's performance of its statutory duties. Where the privacy interest outweighs the public interest, the information is protected from disclosure. In the absence of written authorization permitting disclosure of the records to you, proof that the subject is deceased, or a

demonstration of a public interest that would outweigh the subject's privacy interest, you are not entitled to the requested records under the FOIA.

If you wish to appeal this determination, you may write to the USCIS FOIA/PA Appeals Office, 150 Space Center Loop, Suite 500, Lee's Summit, MO 64064-2139, within 60 days of the date of this letter. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal," or, in the alternative, you may file a new FOIA request that includes the information requested above.

Sincerely,

Jill A. Eggleston
Director, FOIA Operations

PRO-SE

December 05, 2017 - 11:33 AM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	49839-1
Appellate Court Case Title:	John Mason, Appellant v Tatyana Mason, Respondent
Superior Court Case Number:	07-3-00848-0

The following documents have been uploaded:

- 498391_Briefs_20171205113221D2076609_3859.pdf
  This File Contains:
  Briefs - Respondents
  The Original File Name was 49839-1-II RESPONSIVE BRIEF OF TATYANA MASON.pdf

A copy of the uploaded files will be sent to:

- ken@appeal-law.com
- laurier@washingtonstateattorneys.com
- paralegal@appeal-law.com

Comments:

Sender Name: Tatyana Mason - Email: tatyanam377@gmail.com
Address:
PoBox 6441
Olympia, WA, 98507
Phone: (206) 877-2619

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