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AUG 02 2012

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 287602

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DIVISION III
STATE OF WASHINGTON

Liliia V. Kozniuk, Respondent,

v.

George M. Slaughter, Appellant.

BRIEF OF APPELLANT

George M. Slaughter, II, Pro Se
1967 East Gloucester Street
Boise, Idaho 83706
(208) 407-4215 or (208) 570-7196 or Canada (604) 515-7599
gslaughter2@yahoo.com

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TABLE OF CONTENTS

page

Table of Authorities	0
A. Assignments of Error	1
Assignments of Error	
No. 1	1
No. 2	1
No. 3	1
No. 4	1
No. 5	1
Issues Pertaining to Assignments of error	
No. 1.....	1
No. 2.....	2
No. 3.....	2
No. 4.....	2
No. 5	2
B. Statement of the Case	2
C. Summary of the Argument	9
Standard of Review.....	10
D. Argument	11
I. THE MARRIAGE IS INVALID BECAUSE IT WAS INDUCED THROUGH FRAUD GOING TO ITS ESSENCE.....	11
II. POLICE REPORT AND RECORDINGS ADMISSIBLE.....	37
III. THE I-134 AFFIDAVIT-OF-SUPPORT DOES NOT OBLIGATE THE SPONSOR TO SUPPORT THE ALIEN.....	41
IV. THE TRIAL COURT PROHIBITED THE PARTIES' PRACTICE OF RELIGION.....	43

E. Conclusion..... 46

TABLE OF AUTHORITIES

A. Table of Cases

Beach v. Beach, 141 N.W. 921, 160 Iowa 346, (1913) Pg 10

Behrman v. Behrman, 139 P.3d 307, 2006 UT App 257, (Utah Ct. App. 2006), cert. denied, 150 P.3d 544 (Utah 2006) pg 23

Bielby v. Bielby, 333 Ill. 478 (1929), 165 N.E. 231. pg 11

Bilowit v. Dolitsky, 124 N.J.Super. 101 (1973), 304 A.2d 774 pg 19, 46

Blair v. Blair, 147 S.W.3d 882, (Mo. Ct. App. W.D. 2004) pg 19

Cantrel’s Estate, 154 Kan. 545, 119 P.2d 483 (1942) pg 36

Cheshire v. Cheshire, 2006 WL 1208010, at *2 (M.D.Fla. May 4, 2006) No. 3:05-CV-00453-TJC-MCR pg 40

68 F.3d 1296, 43 Fed. R. Evid. Serv. 415 pg 44

Hall v. Hall, 362 A2d 648 (1976), 32 Md App 363 pg 45

Helfrick v. Helfrick, 246 Ill. App. 294 (1927) pg 10, 45

Jackson v Industrial, 122 Ariz 4, 592 P2d 1270 (App 1978) pg 18

Johl v. United States, 370 F.2d 174, 177 (9th Cir.1966) pg 21

Lamberti v., 272 Cal.App.2d 482, 77 Cal.Rptr. 430 (1969) pg 27

Louis v. Louis (1970), 124 Ill.App.2d 325, 260 N.E.2d 469 pg 10, 11, 37

Lyon v. Lyon, 82 N.E. 850, 230 Ill. 366, (1907) pg 10

Masters v. Masters, 108 N.W. 2d 674-679 (1961), 13 Wis.2d at 341, pg

Means v Industrial Commission, 110 Ariz 72, 515 P2d 29 (1973) pg 18

Mitchell v. Mitchell, 310 A2d 837, 66 ALR 3d 1275, A.2d 837 (DC App 1973)	pg 18, 45
Nakamoto v. Del Rosario, 363 F.3d 874	pg 21, 31
News World Communs, Inc. v. Thompsen, 878 A.2d 1218, 1222 D.C. 2005	pg 11
Parratt v. Taylor, 451 U.S. 527, 535, 108 S.Ct. 1908, 1912 (1982)	pg 43
Rubin v. Rubin, 73 AD 2d 148, 425 NYS 2d 331 (1980)	pg 22
Rojas-martinez v. Acevedo-rivera, 2010 WL 2404437 (D.Puerto Rico)	pg 19
Sellers v. Sellers, 428 P.2d 230, 240 (Okl.1967)	pg 36
Stump v. Stump, 2005 WL 1290658, No. 1:04-CV-253-TS, at *4 (N.D.Ind. May 27, 2005)	pg 40
Tice v. Tice, 672 P.2d 1168, 1983 OK 108	pg 36
13 Wis.2d at 341, 108 N.W.2d at 679.	pg 21, 45
Tornheim v. Kohn, 2002 WL 482534, at *3-6 (E.D.N.Y.Mar.26, 2002)	pg 39, 40
VJS v. MJB, 249 N.J. Super 318, 592 A.2d 328 (1991)	pg 18, 23, 24, 45
Williams v. Williams, 543 P.2d 1401, 1403 (Okl.1976)	pg 35
Wolfe v. Wolfe, 62 Ill.App.3d 498 (1978), 378 N.E.2d 1181, Ill.App.1Dist.	pg 18, 45
<i>Ysern v. Horter</i> , 91 <i>N.J.Eq.</i> 189, 110 <i>A.</i> 31 (Ch.1920)	pg 23
Thurber v. Thurber, 186 Misc. 1022, 63 N.Y.S.2d 401	pg
121 Ariz. 602, 592 P.2d	pg 18
124 Ill.App.2d at 330, 260 N.E.2d at 472	pg 37

B. Constitutional Provisions

Article 4, Sect 1, United States Constitution, Laws of Other States pg 39

Article 1, United States Constitution, Interference in Religion pg 43

C. Statutes

Revised Code of Washington, 5.44.040..... pg 41

RCW 26-09-040 Petition Invalidation Marriage

26.04.130 Voidable marriages pg 10, 11

Idaho ER 803(a)(5) Hearsay rule on tape-recorded evidence pg 44

Idaho Evidence Rules 901(a)(6), 904(a)(6), 1004 pg 44

Idaho ER 904 Admissibility of Documents pg 44, 45

Idaho Code 18-6702, 18-6707 Digital Recordings pg 46

Immigration Marriage Fraud Amendments of 1986 Public Law 99-639

(Act of 11/10/86) pg 41

Immigration and Nationality Act, 1182(a)(4), 1183(a) §275(c) pg 10,18,31

Immigration and Nationality Act, § 275(c), 8 U.S.C. § 1325(c).pg10,18,31

8 USC §1101 pg 26, 40

Title 8, CFR, section 213 (a) (2) pg 41

USC 8 §1183 pg 40

42 U.S.C. § 1983 pg 43

D. Court Rules

35 F. 3d, 1088, 41 Fed R. Evid. Serv. 246 pg 10

E. Other Authorities

29 COA 431 pg 18, 23, 45

A. Assignments of Error

Assignments of error

No. 1 The trial court erred when it denied admission of the police report into evidence..... CP 95 EX 6 , RP 76-77

No. 2 The trial court erred when it suppressed digital recordings offered into evidence to refute testimony and confiscated Slaughter’s digital recorder containing evidence that was intended by Slaughter to be offered into evidence: Article 4, Section 1 U.S. Constitution..... CP 95 , RP 35-37

No. 3 The trial court erred when it found that the affidavit of support was a contract that obligated Slaughter to support Kozniuk CP 95

No. 4 The trial court erred by abuse of discretion and in its finding of facts by misunderstanding those facts and making erroneous inferences in ruling that the marriage was valid and not induced by fraud which went to the essence of the marriage..... CP 95-109

No. 5 The trial court erred when it refused to hear arguments based on religious convictions of both parties as they related to inducing marriage by fraud or breach that goes to the essence of the marriage contract...RP 5

Issues pertaining to assignments of error

1. Is a police-report related to a domestic violence allegation offered to refute testimony at trial admissible into evidence? (Error 1) page 39

2. Are digitally-recorded conversations admissible into evidence to refute testimony at trial if the State where the recording was made has a single-consent law that allows these into evidence in its own courts and the courts of other States? (Error 2) page 41

3. Does a long courtship between a sponsored alien and a U.S. citizen support a conclusion of no marriage fraud when the marriage itself was not established and lasted twenty-six days under suspect circumstances? (Error 2, 3) page 11.

4. Does an I-134 Affidavit of Support obligate a sponsor to support the alien? (Error 1) page 39.

5. Did the trial court violate the parties U.S. Constitution First Amendment right to freedom from government prohibiting their practice of religion by refusing to hear an argument based upon religious beliefs of both parties as they relate to inducing marriage by misrepresentation and fraud? (Error 2, 3) page 42.

B. Statement of the Case

Procedural history

After two years of long-distance courtship and visits, sponsored by George Slaughter of Boise, Idaho, Liliia Kozniuk, with her son Jenya, came from former Soviet Ukraine and entered the United States on December 28, 2007 on a K-1 Fiance visa authorized by United States Department of Citizenship and Immigration Services (USCIS). They were

married at the Franklin County courthouse, Washington on January 7, 2008. Liliia abandoned the marriage on February 3rd, 2008. On February 11, 2008, Liliia filed a petition ex parte for a protection order granted by default in Franklin County. Liliia petitioned for an extension of the protection Order on March 23, 2009. George responded to dismiss the order. The Franklin County Court heard the evidence showing that Liliia's representations were untrue and on the merits denied to extend the protection order. The day of the extension hearing, In March 2008, one-year after leaving George, Liliia filed the petition for dissolution in Benton County, WA. Not Franklin County.

After a hearing on or about May 23rd, 2009, on July 13, 2009, George filed a counter-claim for invalidation. In July of 2009, Liliia hired an attorney and filed a modification to her petition for dissolution changing some allegations and adding enforcement of support based on an affidavit of support signed by George, a condition for a fiancé visa. Several pre-trial and motion hearings regarding Slaughter's petition's to dismiss, counter-claim for invalidation, motion to set-aside default judgment for support, and Answer to Complaint for Dissolution were continued to the September 10, 2009 trial date. The court dissolved the marriage, ratified the support and dismissed all other motions by Slaughter. A special set for entry of

Order was conducted December 17, 2009 in Benton County, WA. George filed Notice of Appeal January 15, 2010. CP 110-126.

Statement of Facts

In 2005 Liliia's brother, Andrei Sokolovich, created a profile on the American web-site Match.com. RP 10 lines 24-25. Her brother assisted Liliia in representing that she lived in Pasco, Washington by allowing his American e-mail address to be listed in the profile. RP 42 lines 1-5, Rp 43 lines 22-25, EX 1. George searched for a marriage partner and selected Liliia's profile. For a month, Andrei forwarded George's correspondence to Liliia in Russia. Later, George asked, and Lillia explained that she was Russian. She later revealed she lived in her parent's apartment in Moscow.

Based upon Liliia's correspondence that she was seeking to be married, in February, 2006, George completed all processes to receive his passport to meet Liliia. In June of 2006, George travelled to Ukraine for ten days where she had moved with her parents and her son.

George met Liliia in Kiev, Ukraine where she had come by train, from Odessa to meet him, all paid by George.

Liliia insisted that she shared his beliefs, EX 13, 14, completely agreed with his life-style, and wanted to marry. George paid for an English-speaking translator, all the costs of hotels, tours and meals. After several days in Kiev, George and Liliia travelled by train all-night from Kiev to

Odessa. George met Liliia's parents and son and lived with them in the apartment for three more days where Jenya had no bedroom sleeping on a hide-a-bed couch.

After George went back to America, he started the lengthy and involved visa petition process for both Liliia and her son in November of 2006. RP 48 lines 11-16. Daily Webcam sessions continued.

In December of 2006, Liliia broke off contact for one week frustrated by the lack of progress to obtain the visas. RP 44 line 16-19 RP 46 lines 15-21 In January of 2007, Liliia re-contacted George, apologized and begged George to continue to marry. RP 46 lines 15-25, RP 47 20-25.

In May of 2007, again George travelled to Odessa. George presented Liliia with a diamond engagement ring in front of her parents. See photos.

In September 2007, Liliia received their visas after George's extremely difficult re-applications and phone calls. RP 47 line 7-17 RP 50 19-25.

George again took time from work and flew directly to Odessa in November of 2007. George did this so close to their arrival date in case he was needed by the Consulate, and to assure a smooth trip in December.

December 28th, 2007, Liliia and Jenya, arrived in the US. RP 106 lines 1-3, RP 102 line 9-15 EX 20

Liliia's brother and his wife, Andrei and Sveta, without telling George had driven to Boise airport to receive Liliia and Jenya. RP 9 lines 8-9 At

her brother's suggestion, George and Liliia remained in Boise one night while Jenya went to Pasco. RP 9 lines 11-12 At noon George and Lillia went to Pasco, arrived evening of December 29th,2007. RP 9 line 20

They all lived in Andrei's house with their four children for one week. (EX 9) Every day was a family reunion. Liliia's dear friend with her son flew from New Jersey. Sveta's parents and other family live in Pasco,WA.

George applied for a marriage license. They were married on January 7, 2008 in Pasco, County, WA. After the marriage, George bought all the supplies and food for a reception. RP 10 line 8 They stayed in Pasco, another two days. RP 8. After eleven days in Pasco, George, Liliia and Jenya then drove back to Boise. Jan. 9th, 2008.

That same day, January 9, At 3 pm, Liliia requested and George drove to the social security office. RP 7 lines 11-22 Then at USCIS they were told an appointment was required through infopass. (EX2) The staff presented Liliia applications for authorization to work and to travel. After dinner, they went and purchased a bed for Jenya. EX 5. The bed was delivered on January 11, 2008, only 48 hours after arrival in Boise from Pasco.

The process of registering Jenya in School was started January 10th. RP 8 lines 18-20, RP 79, EX 8. This effort involved many meetings with school officials that George initiated, attended, with many phone calls. RP

7 lines 16-25, EX 7. The School administrators wanted Jenya to attend a Language Arts Academy fifteen miles from the house. George advocated for Jenya to be admitted to play sports with the local Timberline School and to receive his activity card for local school functions. RP 31 lines 9-10, RP 33 lines 22-23, RP. Jenya couldn't start classes until January 22. When school started, George with Liliia drove Jenya the first few days until bus arrangements were approved, another negotiation George conducted. RP 36.

One week before school started, they got phones for Jenya and Liliia, and went shopping frequently RP 29 lines 14-16, EX 9

On January 11th, George made the all-day trip to appear in Camas County, Idaho, 4th Judicial District for a hearing. (RP 28 lines 12-25)

George also was completing tasks for a restaurant remodel in McCall, Idaho, one-hundred miles from Boise. On January 18, 2008 George met fire and building department personnel in McCall. RP 28 lines 19-25.

Liliia spent many hours every day calling to find local Russians to help her find work, researching green card requirements on-line and talking/web-camming with her relatives and her friend in New Jersey. RP 13 lines 20-21, EX 7.

George applied on-line January 12th to meet a USCIS agent on January 22, 2008. RP 7 lines 11-25, EX 2. All, with Jenya, went to the

appointment and received instructions for adjustment of status including the I-586 form and I-864 affidavit. RP 7 lines 11-24.

George decided he could not execute the I-864 affidavit of support to immediately sponsor Liliia and Jenya for green-cards. After his two divorces, George felt the financial risks were too extreme. RP 60 9-22.

The pressure and insistence from Liliia and her brother over the green-cards became intense after the USCIS meeting January 22, 2008. RP 7 lines 11-25. George explained his fears of signing the affidavit. RP 60 lines 4-22, RP 61. During the following week Liliia with her relatives began to pressure George by web-cam and relayed messages through Liliia to secure her permanent residence, that it was required to prevent their deportation. RP 7 line 21-22. George continued to resist applying to sponsor them for immediate adjustment of status.

Saturday, February 2nd, 2008, on a trip back home from the Russian grocery store, Liliia asked George to sign over to her the pink-slip to the mini-van. This alarmed George that things were not what they seemed. RP 57 lines 21 -25, RP 58 lines 1-6, RP 64 lines 7-25. Liliia's intentions became extremely suspect to George.

That evening George asked Liliia to talk with him. George wondered what was the truth of his situation. George told Liliia that she was going back to Ukraine; RP 90 line 16, RP 93 lines 9-14 that he would bring

Liliia to Pasco on Tuesday. She phoned her brother asking him to get on-line, then spoke with him in Russian. RP 14 lines 7-17 She went with Jenya to his room where Liliia had been sleeping that past week. George slept in the master bedroom alone. RP 93 14-17

George awakened in the morning to the sound of strange voices. RP 15 line 2 It was the police responding to an allegation by Andrei of domestic battery and threats to kill them. EX 34 At 6:30 am, February 3rd 2008, the police questioned and examined Liliia, George, Jenya, all in separate rooms. RP 15 lines 3-5. No bruising reported. No signs of abuse.

The Police explained they were not making arrests nor did they mention any threats. RP 15 lines 5-7. The police stood-by while Liliia, Jenya with Andrei stripped the bedrooms and baths of all linens and towels and toiletries, lamps, laptop computer, its antenna and items that belonged to George. CP 13-16. Liliia left with her brother and Jenya to Pasco abandoning the marriage on February 2nd /3rd, 2008.

C. Summary of Argument

Liliia induced George to marry by misrepresenting her genuine and resolute intent to persevere in a marriage and by fraud for the purpose of obtaining from George sponsorship of her and her son for an alien fiancé visa for admittance to the United States on promise to marry and to avoid monetary expense and with the intent to further con Slaughter into

sponsoring her for permanent resident status; not to share a life together as husband and wife.

Liliia misrepresented her intention to genuinely establish a marriage relationship, to cohabit after the marriage, to remain married, and misrepresented her religious beliefs to induce George to marry her.

A sponsor is not legally obligated by the I-134 Affidavit of Support.

Evidence offered to refute testimony and suppressed at trial was admissible.

Standard of review

Factual components of district court's evidentiary determinations are reviewed under "abuse of discretion" standard, but legal components of these determinations are reviewed de novo. 35 F.3d 1088, 41 Fed. R. Evid. Serv. 246

Actionable "fraud" consists of a false material representation made as a positive assertion which is known either to be false, or made recklessly without knowledge of the truth, with the intention that it be acted upon, and which is relied upon by a party to his/her detriment. *Beach v. Beach*, 160 Iowa 346, 141 N.W. 921-22 (1913). 1.1 Marriage is founded on business principles [in which] the utmost good faith is required from all parties, and the least fraud in connection therewith is a subject of judicial cognizance.

The fraudulent representation giving rise to the action must be of an existing fact, essential to the marriage contract (*Louis v. Louis* (1970), 124 Ill.App.2d 325, 260 N.E.2d 469), which makes impossible the performance of the duties and obligations of the marriage relationship (*Helfrick v. Helfrick* (1927), 246 Ill.App. 294), or renders the continuation of the marriage dangerous to life or health (*Lyon v. Lyon* (1907), 230 Ill. 366, 82 N.E. 850)

Trial court rulings in divorce action which are supported by substantial evidence will not be disturbed on appeal, and "substantial evidence" is that which a sensible person may accept as adequate to sustain a judgment.

RCW 26.04.130 Voidable marriages.

When either party to a marriage shall be incapable of consenting thereto, for want of legal age or a sufficient understanding, or when the consent of either party shall be obtained by force or fraud, such marriage is voidable.

If one spouse intended the marriage to be a sham when the ceremony took place, but the other intended it to be genuine, then the one committed marriage fraud but not the other. Immigration and Nationality Act, § 275(c), 8 U.S.C.A. § 1325(c).

To sustain a cause of action for annulment based on fraud, the law requires proof of fraud which goes to the essence of the marriage contract. (Louis v. Louis (1970), 124 Ill.App.2d 325, 260 N.E.2d 469; Bielby v. Bielby (1929), 333 Ill. 478, 165 N.E. 231.)

Unjust enrichment occurs when “(1) the plaintiff conferred a benefit on the defendant; (2) the defendant retains the benefit; and (3) under the circumstances, the defendant's retention of the benefit is unjust.” News World Communs., Inc. v. Thompsen, 878 A.2d 1218, 1222 (D.C.2005).

Fraud may be proved by circumstantial evidence Sellers v. Sellers

D. Argument

The marriage is void under RCW 26.04.130. Liliia misrepresented her intention to establish a marriage relationship and live with George, (which goes to the essence of the marriage) remain married as promised, and fraudulently represented that she would follow Bible teachings related to marriage that goes to the essence of the marriage. EX 13-15

Liliia's motive for misrepresenting her intentions was to get to America.

The Evidence Demonstrates That Liliia's Testimony At Trial Was Misleading or Lies.

I. THE MARRIAGE IS INVALID BECAUSE IT WAS INDUCED THROUGH FRAUD GOING TO ITS ESSENCE.

Without cause, Liliia abandoned the marriage after 24 days. The marriage is invalid because George would not have married Liliia if he had known she did not genuinely intend to establish a marriage relationship, remain married and live with him, and practice Christianity after arrival in the United States.

Immigration officials verified it was unnecessary to apply for permanent resident status for two years. RP 61 RP 74, 94, EX 2. Liliia continued to pressure George to execute the I-864 RP 7 lines 11-25. A digital recording confiscated by the court had a recording of these meetings with USCIS RP 35 lines 11-13 & 22-25. When George refused to sponsor for ten years, she abandoned the relationship, as concluded by the trial court. RP 117 line 5. These actions by Liliia support the strong probability that Liliia was attempting to further defraud George by continuing to misrepresent the requirements to adjust her alien status and further induce George to sponsor her for permanent residency - and then leave.

Contrary to the trial court's statement that Liliia could have come to the U.S. to both marry George and get to the United States - she could not do both. George argued that Liliia misrepresented her intention to be with him. RP 111 lines 6-9. The trial court, said, "Now that's not really an either/or proposition. She might want to marry you *and* come to the United States." RP 111 line 18 – 20, line 23-24. The trial court testified for

Liliia. Liliia never stated that one of her purposes was to come to the USA. Liliia references her intent to cohabit after marriage in her testimony. RP 7, EX 13-14.

The trial court then asked the question: "...[How] do you show that her only purpose in coming here was to come here?" RP 111 lines 23, 24. George does not have to prove that she came only to come, presuming that she had a choice to come only to come, which she did not, and inferring that if she wanted to come to the US, but had to marry, that it would nullify her deception of George. Another way to ask is 'How do you show that her only purpose in coming here was to marry George?' We can also ask, especially since only George could bring her here, 'Did George only bring her here to marry her?' The K-1 visa was issued for one, singular purpose - marriage. Residency was a bi-product of marriage.

It was an either/or proposition; more clearly stated, she could either marry George or not come to the US. Coming to the U.S. was not an option without marriage. There was only one choice, marriage. No marriage, no access. There was no option to come to the US and stay if she decided not to marry. It was not an option-to-marry-George-and-option-to-stay-or-visit visa. It follows then that she did not come to the US to come to the US. She represented to George one reason for coming: to marry him. She never said another reason for coming to the U.S. was to

get to the US and rejoin her relatives. She never said or wrote that maybe she would opt to leave him; that she may leave him within three weeks after arrival. She did not say that it was possible that she would just delay the marriage for ninety days and then end her holiday in the US and return to Ukraine. Had she even hinted at any of these possibilities, George would not have spent the years and thirty-thousand dollars to sponsor her and Jenya for the visa to marry him. Therefore, if the only reason she came was to marry, then there was not another reason; she did not come to the US to marry him and so she could come to the US. She represented that her sole and singular reason for coming to the US was to marry him. George relied on that.

Before she arrived, she did not notify George that she would leave him unless he immediately sponsored her for permanent status. She testified that all conversations related to permanent status occurred after marriage and arrival back in Boise. RP pg 8 line 16 – 20 The court itself concludes first that, ‘she became disenchanted (her reason for leaving) when [George] refused to sponsor her for ten years’, and later adds to that, ‘part of [her reason for leaving or divorce] was that he refused to sponsor her on a permanent basis,...’. RP 117 line 5, and 17. After she arrived, after sex, but before the sham marriage, after a week with her relatives but before marriage, she did not request that George sponsor her for a green card.

After abandoning the marriage and talking with her support group for a year, and legal council for several months before trial, she did not testify that George had promised to sponsor her.

Liliia's testimony at trial was that George insisted that she marry him immediately. RP 10 line 1-3. The relevance is not explicit, but it can be inferred from her testimony that either: she was hesitant to marry after arriving; or that she wanted time to plan a ceremony. It can also be inferred that she is implying that George favored Washington marriage laws; RP 10 line 1-3. Or, most likely, that she and her relatives represented that they needed to be married soon, to send the marriage certificate to Immigration Services before the end of ninety-days, and to accommodate her friend from New Jersey in the ceremony. All of these are possible reasons for the testimony.

The separate letters of intent to marry, required from both parties to the K-1 visa, that were provided to USCIS, are separate promises by Liliia and George to marry after her arrival in the US. (CP 83 EX No. 2) These, combined with her e-mails gushing her enthusiasm to be married to George, calling herself "your wife" and him "my husband", reasonably allows elimination of the possible meaning of her testimony as being that she did not represent that she intended to marry after arrival in the US or that she hesitated after arrival, unless she had undisclosed plans.

George's alleged preference for Washington marriage laws is irrelevant except as another attempt to confuse. Although they would live in Idaho and could divorce there, but believing that George had a bias toward Washington, RP 10 line1-3, Liliia filed for dissolution in Washington, not in the State of her alleged domicile. If her domicile was in his State of residence, as required to show cohabitation, a notorious representation to the community of living together, this also was not established by the divorce filing itself. In Liliia's mind, and in her attorney's mind, she only lived in Washington, never in Idaho.

Unknown to George, Liliia's friend, flew from New Jersey to see her the day she arrived in Pasco, RP 32 lines 3-10, RP 9 lines 20-23, the very next day after Liliia's arrival to the US. This conflicts with Liliia's statement that George wanted to keep her from her friends. It clearly supports an effort to arrange a marriage ceremony soon because her friend could attend, but as testified, RP 32, her friend could stay no longer. George applied for the license January 2nd, 2008 attempting to arrange the marriage for the week of January 2, but had to wait three days before the license could be issued and no Judge available until January 7th. It can be inferred that her friend knew of the plan to marry immediately, but the delay went beyond her planned stay. The 6th was set to fall after the marriage of January 3. Friends do not waste a trip and not be there for the

marriage. The plan already was to include her friend, but no one knew about a three-day waiting period after application for marriage. Also note, of his own accord, George immediately took Liliia to Pasco without knowing her friend was waiting. Liliia testified a “beautiful reception”, RP 10, her friend could not stay any longer. Why say that if she had already planned to leave? RP pg 32 line 8-11. She planned to be at the wedding. This raising-of-suspicious by Liliia instead shows the truth of George’s motives: accommodate family to bring happiness to all parties. Generous.

In reference to the nervousness of the parties to enter the marriage, the trial court comments, “He was as antsy as she was.” RP 117 lines 5 - 7. This is an assessment by the trial court that both parties were not sure about marrying. If true in the case of Liliia, it would support she had suddenly changed her mind; in light of her e-mails - weird. Also supports the e-mails were insincere; Liliia never intended to marry after arrival, not possible under the K-1 visa requirements; She took it very lightly or did not intend to remain married; She treated the contract as only to be maintained in the event George capitulated to sponsor her for permanent residency, a state of marriage she herself has alleged was his wrong against her. George could not live under the threat of indentured servitude to her.

29 COA 431: What is considered a crucial factor in one marriage relationship may not be considered crucial in another. *Wolfe v Wolfe*, 76

Ill2d 92, 27 Ill Dec 735, 389 NE2d 1143 (1979); VJS v MJB, 249 NJ Super 318, 592 A2d 328 (1991). Rather than the "essential" elements of a marital relationship being objectively predetermined, the materiality of a misrepresentation is tested subjectively, by determining whether the misrepresentation was actually a material factor in procuring the marriage, or, in other words, whether the spouse would have consented to the marriage had there been no fraud. Mitchell v Mitchell, 310 A2d 837 (DC App 1973) [New York law].

Misrepresenting her motives for marrying him as a desire to establish a life together, plus representing that she followed Biblical mandates when she did not, and is not now adhering to those teachings, is the basis of the fraud that vitiates George's consent to the marriage.

See Immigration and Nationality Act, § 275 (c), 8 U.S.C. § 1325 (c).

See also Means v Industrial Commission, 110 Ariz 72, 515 P2d 29 (1973) [court must give some consideration to plaintiff's personal expectations to determine whether defendant's misrepresentation or concealment was such that fundamental purpose of plaintiff in entering into marriage was defeated.] In some cases, the purpose for which a misrepresentation was made will be considered more significant than the precise misrepresentation itself in determining whether it is grounds for annulment. See, e.g., Jackson v Industrial Commission, 122 Ariz 4, 592 P2d 1270 (App 1978) vac in part on other grds 121 Ariz 602, 592 P2d 1258 (1979) [false protestations of love and affection alone do not constitute grounds for annulment; however, such protestations made with fraudulent intent to deprive plaintiff of her property are grounds].

Public policy demands that integrity of the marriage contract be preserved so far as possible, and fraud necessary to avoid a marriage must be such as is deemed vital to the marriage relationship. Blair v. Blair, 147 S.W.3d 882 (Mo. Ct. App. W.D. 2004)

An action for annulment is based on proof of a false representation or a concealment tantamount to a misrepresentation, on which the complainant justifiably relied and a showing that the alleged fraud was the inducing cause; that the complainant would not have consented to the marriage had he known the truth. Each case must be determined on its facts and the fraud alleged must be proved by clear and convincing evidence. (See Bilowit v. Dolitsky (1973), 124 N.J.Super. 101, 304 A.2d 774.) Factors such as the

length of the marriage, the birth of off-spring, the length of the parties' cohabitation after the discovery of the fraud and the possibility of reconciliation are relevant to a determination of the materiality of the fraud alleged.

See *Rojas-martinez v. Acevedo-rivera*, 2010 WL 2404437 (D.Puerto Rico)

Considering the integrity of the marriage. A paper contract without integrity, without acting on those commitments, becomes a grossly distorted imitation. Public policy interest is the preservation of the solemnity and seriousness of the marriage commitment. Encouraging stability by continuation in the marriage. To give a bias to the upholding of every marriage as valid simply because the contract was entered into, for the misunderstood purpose of public interest, erodes the integrity of marriage. It is not the purpose of the court to ratify as legitimate marriages because it is in the Public interest to call a contract valid, a real union, just because a couple signs a document at a court house

Instead, it is the court's purpose to discern which contract is genuine for upholding a genuine commitment between the couple, not the paper contract, as sacred or solemn. If a couple can simply sign the contract document and then walk away from all responsibilities of that contract, the purpose becomes null, it is legalized fornication, or aiding and abetting.

Lilia was reckless, demonstrated lack of sincerity and genuiness by leaving for a trivial, and impossible reason. 'He searched for another woman'. This constitutes gross irresponsibility that amounts to a neglect

of duty to the seriousness of a commitment like marriage; one could get a divorce just because a partner forgot an anniversary; it is untenable.

It is not the defense of the idea that all marriage contracts are real, even when one party changes their mind frivolously within days after the contract is executed. It is the preservation of the genuine marriages that is in the public interest. It is not in the public interest to import people from other societies who view the American immigration system and courts as a means to personal gain at the emotional and monetary expense of sponsor. That is not protecting the solemnity, dignity and seriousness of commitment represented by the marriage contract.

In enunciating the test of materiality, the court in *Masters* stated:

“We deem the character of such false representations * * * to be material as a matter of law, if they in fact caused the marriage to be entered into under circumstances that no marriage would have taken place absent such false representation.” 13 Wis.2d at 341, 108 N.W.2d at 679.

Petitioner particularly relies on *Johl v. United States*, 370 F.2d 174, 177 (9th Cir.1966) and *Nakamoto*. In *Johl*, the court held,

The immigration law, in granting advantages to those who have married American citizens, is not talking about ceremony or legality - the taking of those steps which enable a couple lawfully to live together in a marital relationship. It is talking about the marital relationship itself - an actual joining together as husband and wife.

The marriage contract has an implied set of obligations. One of these essentials is living together. Liliia promised that she would remain married and live with Slaughter for fifty-years EX 13, 14, 15; an allusion to a life-long union by Liliia in hundreds of e-mails/instant messages between them. The Trial Court has a double standard. RP 106. Granted, people in a

marriage can commit acts that justify abandoning and divorce. Bible allows separation for cause. No such acts or words provided cause.

Liliia's petition to the Franklin County Court for a protection order was dismissed when George showed that her testimony was unsupported. Liliia alleged George denied her a phone, denied her the use of a phone and no contact with her family and friends. RP 75, RP, EX 7. The court found no basis after seeing EX 7 phone records.

The action for dissolution was initiated by Liliia one year and one month after the abandonment. Waiting to file for divorce serves no purpose except to provide documentation to US Immigration that the marriage lasted for over a year, when in-fact, there was no cohabitation, no real marriage. The order disallows contact for one full year; this practice does not protect and nurture marriage, it destroys any possibility of reconciliation and preservation of marriage. There was no cohabitation and no contact between the parties during that thirteen-month period. Initiating the motion for protection is also an abuse of process as is the action for divorce. There was no cause for the action in either case.

In some instances domicile may be considered an element of the plaintiff's prima facie case. See *Rubin v Rubin*, 73 AD2d 148, 425 NYS2d 331 (1980) [plaintiff's residency for at least two years in New York was element of cause of action, which plaintiff was required to prove at trial].(29COA 431)

Liliia never established her domicile with Slaughter. This also adds to the credence that her actions go to an essential of marriage. She filed her

legal-actions at her place of residence, Kennewick and Pasco, WA., not Boise, Idaho, where George lived for thirteen years. CP 95 There was no cohabitation after George discovered the misrepresentation; stated twice by trial court. The court recognized a lack of conviction – no meeting of the minds. RP 117 5-7. This is grounds for invalidation on the basis that when George realized it was fraud and Liliia knew he wasn't going to sponsor, they stopped cohabiting. In the instant case, cohabitation is an essential requirement for a genuine, valid marriage.

As stated by the Trial Court, Liliia was disenchanted when George refused to sponsor her immediately. RP 117 line 5

Behrman v. Behrman, 2006 UT App 257, 139 P.3d 307 (Utah Ct. App. 2006), cert. denied, 150 P.3d 544 (Utah 2006)

In 249 N.J.Super. 318, 592 A.2d 328 the Superior Court of New Jersey Bergen County. V.J.S. v. M.J.B decided:

In Ysern v. Horter, 91 N.J.Eq. 189, 110 A. 31 (Ch.1920), Husband's concealment prior to marriage of intent to have children contrary to expressed antenuptial agreement not to have children was a fraud which went to essentials of marriage and warranted annulment.

It is axiomatic that, given proper proof, a party will be entitled to an annulment when the spouse *refuses* to have children. This court now finds that the converse is also true...

249 N.J.Super. 318, *319, 592 A.2d 328, **329. On the representation of defendant that he was in agreement with plaintiff's wish not to have children, plaintiff married him on September 23, 1989. Subsequent to the parties' wedding ceremony and despite their agreement, defendant refused to engage in sexual intercourse utilizing any form of contraception.

Even if at the time of the marriage, in the mind of one of the parties, they intended to remain married because they presumed to attain from the

other spouse some future benefit, (sponsorship) and then, after marriage, that presumptive spouse discovers that their assumption was incorrect, that does not provide cause for abandonment. A revelation that a party to a marriage made an assumption, unless expressed explicitly before the marriage, or not otherwise implied by societal norms or reasonably inferred or expected in the normal course of courtship - such as an essential of marriage, does not provide cause for dissolution.

It is fraud based on a reckless promise. There was no sincere intent. It is reckless and demonstrates a distortion of the marriage contract – no meeting of the minds - a requirement of all contracts.

Sponsorship for a green-card, which was never alleged as promised by George, not required to remain in the USA, is not an essential of marriage. RP 116. Refusing to subject oneself to risks by sponsoring is not deception nor justifies leaving the marriage.

Liliia testified that George resisted her getting authorization to work. However, after marriage, the same day on arrival back to Boise, George and Liliia applied for her social security number in anticipation of her authorization to work. RP 7 lines 5-9, CP 83 EX 11. No opportunity for disagreement about working, which would be an advantage to the household. RP 8 line 1-2, 16-20. The process to obtain a social security number requires that the recipient apply, then the SS card is mailed. Liliia

testified that she received her SS card the next week. RP 7 lines 5-6 CP 83 11. This means that the application was made early January 2008 upon the week of arrival. George testifies that her ability to work was not dependent upon having permanent resident status. RP 59 lines 5-16, RP 61 lines 16-23, RP 62 lines 1-15, CP 83 No. 3. As Liliia and George both testified, George scheduled an appointment with USCIS to get the work authorization paperwork that same week after the marriage. RP 7 line 5-6 lines 16-25, RP 60 lines 23-25, RP 61-62.

Liliia got her work-permit in February of 2008, the same month that she left Boise, RP 121 lines 15-16 which means she applied roughly two weeks before receiving this work-permit after first obtaining the SS number, and all this without applying for permanent resident status, just as George, USCIS and Jim Phair told her. RP 121 lines 15-16, CP 83 No.3.

There are no costs to apply for work authorization. Liliia attempted another misdirection of the trial court by stating that George did not want to incur the costs of applying for the work authorization. RP 7 lines 23-25

Liliia's testimony is completely inconsistent with the e-mail to Jim Phair re: Social Security card arrival soon, CP 83 No. 11.

Liliia said that George resisted obtaining a work permit: It is required by

USC 8 §1101 that under her status as an immigrant alien, page 27 (i) With respect to each nonimmigrant alien described in subsection oi(a)(15)(T)(i) of this section--2) the Secretary of Homeland Security shall, during the period the alien is in lawful temporary resident status under that

subsection, grant the alien authorization to engage in employment in the United States and provide the alien with an "employment authorized" endorsement or other appropriate work permit.

As Liliia testified, "All of the discussions about the immigration issues occurred after we were married." RP 8 lines 16-17 there was no opportunity for fights and tears as testified by Liliia because that same day they visited the USCIS office without an InfoPass appointment where they learned they needed to register with InfoPass on-line first and make an appointment to meet an agent – they received the Form I-765 Authorization for Employment. She was authorized to work in February. The process had already been initiated in January with George. RP 121 lines 15-16.

The proof is more than sufficient to support the determination that Liliia had the objective of acquiring an advantageous alien status by marrying George. That she made the promises solely to induce him to have a civil ceremony without any serious intention of fulfilling once her underlying purpose had been accomplished. This is the same conclusion reached in *Lamberti v. 272 Cal.App.2d 482, 77 Cal.Rptr. 430 (1969)*.

Where a marriage is induced by fraud or deceit, executed in such a manner as to secure a relationship which otherwise would never have existed, if knowledge of the fraud renders the continuation of that relationship intolerable and deleterious to the injured party's physical and mental well-being, equity dictates that such a marriage be declared invalid.

Liliia wrote in the Motion And Declaration For Temporary Support that:

Husband Abusive. My husband has physically attacked me several times. He became completely controlling. He would not allow me to talk to anyone. After I came to the United States, he did not want me to work. He would not allow me to obtain a driver's license. He then stated that he would not care for my son and wanted to send my son back to Ukraine. He constantly verbally abused me. CP 36

These statements are untrue and unfounded. George registered Jenya for school and paid for his lunches through several months. RP 8 lines 18-19, RP 40 lines 11-20, CP 83 item 8, EX 8.

Liliia presented no witnesses to confirm her claims of abuse and restrictions. Kozniuk's whole immediate family, approximately twenty people, RP 9 lines 1-9, live and work in Pasco, Washington, where this trial was held. Even with council, if these allegations were true, she could have had any one of them to testify that Slaughter was either abusive, RP 12, lines 12-23, or restricted Kozniuk from telephone and internet contact. She did not. With an attorney and months before trial not even a letter from one of them supporting her accusation was provided. Kozniuk called and web-cammed with both her Pasco relatives and her family in Ukraine every day for hours. EX 7.

On the morning of February 3rd, 2008, the police investigated the brother's allegation that there was domestic violence. Their examination of Liliia and Jenya showed no bruising from the alleged choking that was never mentioned to the police at the time of the investigation. RP 15 lines 4-7, CP 83 No. 6.

Liliia testified that she was interviewed by the police. “The police... separated us in different rooms, myself and my son in one and him in another, and they questioned us about what happened. And because [she] had no evidence that [George] had threatened to shoot [her], the Police said that they weren’t going to write up any kind of a report.” RP pg 15 line 5-7. Liliia is testifying that she told the police something that the police would not write into a report because she could not prove it. A threat of harm, especially a threat to shoot someone, is a prosecutable offense and the police will record such an allegation.

The absence of a police report is proof that no threats were alleged by Liliia or Jenya at the time of questioning by the police. The major basis of the complaint and abandonment of the relationship was a threat to murder her, her son and her brother’s family. That is not an event that someone who has been on the phone with her co-conspirator forgets to tell police.

In her testimony Liliia says that she got on Skype (the internet) and contacted her brother. RP 14 lines 7-9. To do this, she first phoned him to tell him to get on-line, in the presence of a George alleged by Liliia to be murderously angry. RP 14 lines 10-13. Skype has to be down-loaded and installed on George’s computer. This was already done, leading to the fact that it was already installed and previously in use and Liliia knew how to use it. George could have removed it to prevent use.

Liliia asks often for help to pay costs. Even for household goods. But Liliia testified that she had a comfortable life. If she was comfortable, she could buy those things without asking George for the money. She was poor and her family struggled to have even food. CP 83 Western Union.

The parties and their children all ate lunch together several times during the week preceding February 3, 2008. RP pg 58 line 7 – 8, EX 12.

If Jenya, 18 years old, still in school at trial date, had been restricted from phone use or activities or internet or had any knowledge of his mother's distress, he could easily have testified, the stipulation at a pre-trial hearing on August 9, 2009, listed additional witnesses CP 57, EX 12.

Almost all the photos provided by George at trial were taken by Liliia's family, not George. CP 83 no. 9, EX 9 They take photos of everything. Had there been any unpleasant behavior immediately after the marriage, or any evidence of the choking Kozniuk testified to, they would have a photo of the bruises. RP 12 lines 19-20. Jenya had a camera phone. RP 66 line 25, RP 67 line 1, EX 7. They always had them. No testimony otherwise.

George drove Liliia to Pasco the day after arrival in Boise. RP 9 20-23. The couple remained in Pasco with Liliia's family for nine days before the marriage and two days after the marriage. This is inconsistent with allegations that George was "extremely violent", and "immediately after the marriage he was violent", controlling or depriving Liliia of contact

with family and friends. The first night after Liliia's arrival in America, George could have kept Liliia in Boise for days. However, he cared for Liliia; he immediately took her to her family/relatives. RP 9 lines 20–23, RP 29 lines 14-16 RP line 19, 55 1-10 RP 57 17-21.

An intent to obtain something other than or in addition to love and companionship from that life does not make a marriage a sham, for purposes of immigration laws; rather, the sham arises from the intent not to establish a life together. Immigration and Nationality Act, § 275(c), 8 U.S.C.A. § 1325(c).

The immigration law, in granting advantages to those who have married American citizens, is not talking about ceremony or legality - the taking of those steps which enable a couple lawfully to live together in a marital relationship. It is talking about the marital relationship itself - an actual joining together as husband and wife. Nakamoto

Liliia testified that George threatened to shoot her and Jenya. RP 6 lines 4-6 & 18-19, RP 14 lines 11-17. Liliia does not include this most severe and alarming allegation in her petitions, CP 3-5, that George said he would “shoot her and Jenya”, RP 15 lines 4-7, nor in her amended Petition for Dissolution after hiring legal council, CP 24-26, nor in her Motion for Temporary Order filed June 2009 where she goes into specifics. RP 12 lines 1-25, CP 35-37. This is not a fear that is easily forgotten. If true, and truly a reason for leaving, it would be foremost in anyone's mind who experienced this terrible threat and feared for their safety.

Liliia's testimony at trial is inconsistent with her own recollection of the relationships between George and her relatives that George already freely established and were on-going. RP 23, line 16 & 24-26. She said George

restricted her from contact with her relatives. RP 13 lines 3-4, RP 27 lines 6-8, CP 36 line 16. She states she felt he was trying to hide her and keep her from normal freedoms, restricted her activities, denied her to work. RP pg 11 line 13, pg 12 lines 12-19, pg 13 lines 3-4 .

However, Liliia also testified: George was friends with her brother RP 14 line 5-6; George met Andrei long before he went to visit Ukraine RP 14 lines 6-7; George invited her parents who stayed with him in Boise, RP 23 lines 13-17; both Liliia and George communicated with Jim Phair, RP 32 lines 11-23; she was phoning her good friend, a friend close enough to coordinate to fly from New Jersey to welcome her, definitely a person Liliia would tell of abuse, but did not, RP 32 14-16; Andrei visited Liliia and George in Boise. RP 29 lines 17-22. Liliia was communicating regularly, after the marriage, with her parents in Ukraine, RP 13 lines 20-22, and her brother by her testimony, "Well, what can I do?" RP 13 lines 22-24. All after arrival back in Boise within two weeks. RP 8 lines 16-19.

The phone records show over seven-hundred minutes used by Liliia calling Pasco, Kennewick, Seattle, Boise numbers and New Jersey and many calls to various immigration agencies. All this communication within two weeks. CP 83 No. 7, EX 7.

Jenya, who was almost seventeen, was attending school and would have definitely made any abnormalities known the School staff , a friend,

or Uncle Andrei, who he knew well phoning regularly, or his friend from New Jersey who came with his mother, Liliia's friend. The trial court states that it seemed that her brother, Andrei, got down to Boise easily and often. RP pg 29 line 17-22 & pg 140 line 23-24. Liliia testifies that she told Andrei that there was abuse. RP 13 lines 22-24. RP 29 lines 17-22 George is outnumbered by three grown adults when her brother is visiting them in Boise but they don't take any action until February when George refuses to sponsor, then they don't testify, have no photos.

George signed-up and bought both Liliia and Jenya mobile-phones knowing they would carry them everywhere, including school. Slaughter has four children, the youngest 13 at the time of this fraudulent marriage. All parents well know how much telephone/internet contact is maintained by teenagers. Jenya lived on the internet. RP pg 92 line 25, pg 93 line 2 – 4, CP 83 No. 7, EX 7. Phone records show many occasions George was absent from the home because the calls are between the phones; Liliia called George CP 83 No.7, EX 7.

George was regularly absent from the home for both business and for activities with his son multiple times. RP 28, lines 1-25, RP 29 lines 6-25 EX 12, RP 29 lines 14-16.

George's son Nathan enthusiastically welcomed and embraced the chance to introduce Jenya to America, muscle-cars and basketball. RP 54 line 15 – 22, EX 12.

Liliia testified that a bed was not provided for Jenya. This was said in support of Liliia's accusation that George wanted to send Jenya back to Ukraine. The bed was ordered that same evening of arrival back in Boise. EX 2 As testified, the bed with box-springs was delivered on January 11, 2008. Threats to export Jenya were alleged in late January.

The photos, all offered as evidence by George, show that George was involved and good friends with her family and their children. RP 23 lines 16-17, 117 lines 3-4.

Liliia testified that George, not Liliia, said that they would spend the holidays with her brother and her family. RP9 line 20-23.

George's conduct and activities are not the actions of someone who would complain about Liliia phoning and web-camming with relatives. There is no credibility that George restricted or resisted her contact with her family/friends who were his own friends for years.

The requirement by immigration law that the alien fiancé marry the US citizen, solemnize the marriage, within 90 days does not, in itself, fulfill the promises made to George. It only fulfills a requirement of law to assure that the alien fiancé is not deported. Nakamoto 363 F.3d at 883.

Implied by every commitment to the rights, privileges and responsibilities of marriage, is cohabitation, sex, children, mutual care, exclusivity, unity.

The judge's reasoning for denying the invalidation and granting the dissolution was that Liliia grew disenchanted twenty-four days after leaving Pasco. RP 117 lines 5-7. This assessment supports the contention that it is more probable that Liliia had no intention to remain married. At the very least, it is outrageously irresponsible, reckless, and blatantly violates decent social norms and standards of honest adults who make genuine efforts to adjust to a new living situation or to resolve any misunderstandings through either compromise or other efforts such as counseling; it speaks directly to the issue of equity in any contract.

A common law duty to perform with care, skill, reasonable expediency and faithfulness accompanies every contract. *Williams v. Williams*, 543 P.2d 1401, 1403 (Okl.1976)

Tice v. Tice Marriage is a personal relation which arises from a civil contract, and which requires the voluntary consent of parties who have the legal capacity to contract. It is a present agreement to be husband and wife and to assume all rights and duties of the marital relationship. *Sellers v. Sellers*, 428 P.2d 230, 240 (Okl.1967); *In Re Cantrell's Estate*, 154 Kan. 545, 119 P.2d 483 (1942)

No reasonable person would exert the efforts and expend the money to: maintain a long-distance relationship; satisfy the USCIS; travel 12,000 miles to meet fiancé three times; file extensive form-work; pay for two medical exams; pay documents translation costs; pay visa fees; pay immigration consultants and negotiate with USCIS for two years; buy airline tickets; then marry her, paying for all costs including three rings,

and then jeopardize the ability of his new wife and son to remain in USA. RP7 lines 11-25. He would do it only with serious assurances/promises that the fiancé shared his beliefs, wanted to be married to him, genuinely loved him, to establish a life together as husband and wife. Certainly no person would do it if suspected their spouse would leave within days after arrival. This is not good-faith efforts under the contract.

Marriage is not a unique contract that can be abandoned on a whim.

“In determining the materiality of fraud, [older] cases may indicate the salutary policy that marriages ought to be protected and promoted. Where, as in the instant case, the fraudulent representations induce consent in form only and performance of marital obligations is rendered impossible, annulment of such a marriage is appropriate.” (124 Ill.App.2d at 330, 260 N.E.2d at 472)

“The policy of protecting and nurturing the institution of marriage is not fostered by declining to legally declare the non-existence of such marriages when in reality they do not and can not exist.” 124 Ill.App.2d at 330, 260 N.E.2d at 472. , Louis v. Louis (1970), 124 Ill.App.2d 325, 260 N.E.2d 469

Liliia attempted to gain a visa before meeting George. RP 22 lines 10-16. The sequence of her efforts to get to the USA infers ulterior motives for marriage. Liliia promised a fifty year marriage. EX 13.

Liliia, without cause, breached that promise one week after obtaining the marriage license to waive the joint application for adjustment of status and eventually to permanent resident. Discretion is abused where it is based on untenable grounds or for untenable reasons. The Court’s reason for denying invalidation, that she was disenchanted, is untenable. RP117

RP 19 line 15-16, All closeness vanished after the parties met with the immigration officials when the newly-weds were informed that Liliia was safe from deportation.

From December 29, 2007 through January 7, 2008, the day of the marriage, Kozniuk had opportunity to break off the marriage. Liliia was not disenchanted with Slaughter (the marriage relationship) until he refused to sign the affidavit of support. (RP 117 lines 11-13) This series of events supports the contention that Liliia misled George to induce the marriage. George clearly had a fear that Liliia also sought to gain the I-864 support before she very likely would leave him, and did leave.

Liliia made the accusation that Slaughter searched for other women on the internet. This means that she was using the computer, saw his activities, and had free access to the computer to contact relatives. George had ample opportunity to find another marriage partner during the two year courtship. He chose Liliia because she represented herself as Christian. At any time during the courtship George could have decided to pursue a younger woman.

Slaughter had been married twice before. Liliia claimed that George wished he had married a younger woman. (RP 13 lines 2, RP) Mr. Slaughter was well aware of his opportunities to select and court a younger woman. He relied on Liliia's representations.

At trial Liliia presented Slaughter's dating web-site profile from 2005 as evidence that George was seeking a new Russian girl-friend after marriage; and it was presented in-part only. The accusation that George was seeking a girlfriend at all, let alone Russian, is outrageous/incredulous considering the circumstances of this case, one being that he had just married her and was unemployed. Had all of the description been offered, it would show the profile was created in 2005 and George openly sought a resolutely Christian wife. CP 83 No. 19, EX 19.

Each of the acts alone are strange and may by themselves bring one to a conclusion of fraud, but taken together, and given the substantial motive for misrepresentation to obtain entry to the USA, the lack of proof to support the allegations, George's efforts to obtain the social security numbers and work authorization; George's enthusiasm to enroll Jenya in School, sports participation and bussing; the change of courts/venue, all these facts strongly support the conclusion that there was fraud and highly probable there was intent to further con Slaughter into committing to ten-years of support to immediately obtain a green card.

Abandonment of the marriage within twenty-three days after signing the license is refusal to cohabitate, an essential of a marriage and this is and was an existing condition.

A person's actions can be deemed fraud even if they intended to perform at the time of promise or if they consider performance under that promise avoidable. If they then later change their mind but do not disclose this, it is fraud. The seriousness of this type of commitment, marriage, is relevant.

III. POLICE REPORT AND RECORDINGS ARE ADMISSIBLE

On the morning of February 3rd, 2008, the police investigated the brother's allegation that there was domestic violence. Their examination of Liliia and Jenya showed no bruising from the alleged abuse that was never mentioned to the police at the time of the investigation. (RP 15 lines 4-7, CP 83 No. 6).

Liliia testified that she was interviewed by the police. "The police... separated us in different rooms, myself and my son in one and him in another, and they questioned us about what happened. And because [she] had no evidence that [George] had threatened to shoot [her], the Police said that they weren't going to write up any kind of a report." (RP pg 15 line 5-7) Liliia is testifying that she told the police something that the police would not write into a report because she could not prove it. A threat of harm, especially a threat to shoot someone, is a prosecutable offense and the police will record such an allegation.

The absence of a police report is proof that no threats were alleged by Liliia or Jenya at the time of questioning by the police. The major basis of the complaint and abandonment of the relationship was a threat to murder

her, her son and her brother's family. That is not an event that someone who has been on the phone with her co-conspirator forgets to tell police.

A police report is admissible under the exception to hearsay rule RCW Title 5.44.040.

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(8) Public Records and Reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, or (C) in civil actions and proceedings and against the Government in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

Federal Courts recognize that objective parts of police-reports admissible:

...state police reports in question qualify as records or reports of a public agency for purposes of Rule 803(8). Baker, 588 F.2d at 556. 35 F.3d 1088, 1091

to be admissible under Rule 803(8)(C)'s exception to the hearsay rule, "a report must first be a set of 'factual findings.'" 35 F.3d 1088, *1091 The "factual findings" in a report qualifying for a Rule 803(8)(C) exception to the hearsay rule must, however, be based upon the knowledge or observations of the preparer of the report... It may appear from his statement or be inferable from circumstances."

Pena-Gutierrez, 222 F.3d at 1086-87; Fed.R.Evid. 803(8) (excepting from exclusion by hearsay rule "[r]ecords, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, ...or (C) in civil actions and proceedings ... factual findings resulting from an investigation [] granted by law, unless the sources ... lack trustworthiness.").

Idaho Statutes permit admittance of tape or digitally recorded evidence.

The Constitution of the United States of America, Article 4, Section 1:

States shall respect the laws and Acts of other States.

RP 36 Idaho ER 904 (a)(6) states,

“Certain Documents Admissible. In a civil case, any of the following documents proposed as exhibits in accordance with section (b) of this rule shall be deemed admissible unless objection is made under section (c) of this rule: A document not specifically covered by any of the foregoing provisions but relating to a material fact and having equivalent circumstantial guaranties of trustworthiness, the admission of which would serve the interests of justice.”

Also, Rule 1004

“Admissibility of other evidence of contents: The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if: ...”

Most germane is Idaho Code 18-6702, 6707 the Interception of Wire and Oral Communications Act and cases related to determining their applicability and admissibility of tape-recorded evidence.

Authorization for disclosure and use of intercepted wire, electronic

or oral communications: 16702 (2)(d)

(d) It is lawful under this chapter for a person to intercept a wire, electronic or oral communication when one (1) of the parties to the communication has given prior consent to such interception.

16707

(3) Any person who has received, by any means authorized by this chapter, any information concerning a wire, electronic or oral communication, or evidence derived therefrom intercepted in accordance with the provisions of this chapter may disclose the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in any criminal proceeding in any court of this state, of the United States or of any state or in any political subdivision thereof.

George digitally-recorded several conversations between himself and school administrators, bank employees, his son, Liliia's son, Liliia, and the lead investigating police officer Weir.

From 68 F.3d 1296, 43 Fed. R. Evid. Serv. 415:

all of the tapes were admissible because a "declaration of one co-conspirator is admissible against members of the conspiracy who joined after the statement was made." United States v. Tombrello, 666 F.2d 485, 491 (11th Cir.) ... Thus, the statements on all of the tapes were properly admitted

Recordings are admissible in a Federal Court.

The digital recordings of conversations, that were confiscated and suppressed, document talks between George and bank personnel, School Administrators. In separate calls, George petitioned for Jenya's admittance to the language academy, assuring bus transportation, to play basketball, and to attend School socials. These recordings were made with Liliia's knowledge. There is a recording of the meeting at the USCIS with Liliia present when agents explained that there would be no deportation for her or Jenya. Another of a returned call, to George's phone, from a Russian contact she made while in Boise confirms Liliia sought work. Again, her testimony to the contrary on each of these events supports the contention that she is deceiving the court. Another recording was with the investigating police officer Weir. Officer Weir explains he would have arrested Slaughter if he or one of the several officers with him had the

slightest suspicion he battered or threatened; it is the directive of the BPD that at any sign of domestic violence, arrest.

III. THE I-134 AFFIDAVIT-OF-SUPPORT DOES NOT OBLIGATE THE SPONSOR TO SUPPORT THE ALIEN

The I-134 affidavit, RP 99 -101, EX 17, is not enforceable on behalf of the sponsored alien as a contract between them. The I-134 was the basis of Liliias effort to enforce support. RP 99-101, RP 102 lines 18-25, RP 103 1-19, RP 59 lines 18-19. It is inequitable in every sense to reward Liliia for her deception.

In Tornheim v. Kohn, 2002 WL 482534, at *3-6 (E.D.N.Y. Mar.26, 2002), the district court dismissed the plaintiff's claims for enforcement of an Affidavit of Support and recovery of legal fees under 8 U.S.C. § 1183a. The court dismissed the claims because Congress required Form I-864 ... The court held that Form I-134 was not a legally binding contract under § 1183a.

Federal Courts have repeatedly sided with argument that the Affidavit of Support is not a binding contract between the parties. See, e.g., Cheshire v. Cheshire, No. 3:05-CV-00453-TJC-MCR, 2006 WL 1208010, at *2 (M.D.Fla. May 4, 2006) (“[F]ederal courts have consistently found that Form I-134 is not a legally enforceable contract against a sponsor by a sponsored immigrant.”); Stump v. Stump, No. 1:04-CV-253-TS, 2005 WL 1290658, at *4 (N.D.Ind. May 27, 2005) (finding that the I-134 Form “is a non-enforceable promise by the sponsor to support the alien”); Tornheim v. Kohn, No. 00 CV 5084(SJ), 2002 WL 482534, at *4 (E.D.N.Y. Mar, 26, 2002) (“[A]n Affidavit of Support on an I-134 Form is not a legally binding contract.”).

Slaughter was told by USCIS and Jim Phair that if the K-1 fiancé divorced before two years she would be deported. (RP 95 line 10-11, EX

11) This is the protection afforded to the tax-payer and the sponsor. From the USCIS:

Immigration Marriage Fraud Amendments of 1986 Public Law 99-639 (Act of 11/10/86), which was passed in order to deter immigration-related marriage fraud. Its major provision stipulates that aliens deriving their immigrant status based on a marriage of less than two years are conditional immigrants. To remove their conditional status the immigrants must apply at an U.S. Citizenship and Immigration Services office during the 90-day period before their second-year anniversary of receiving conditional status. If the aliens cannot show that the marriage through which the status was obtained was and is a valid one, their conditional immigrant status may be terminated and they may become deportable.

Title 8, CFR, section 213 (a) (2), bars the admission into the United States any alien who is likely at any time to become a public charge.

The means to secure entrance for the fiancé is the I-134. This was the basis of the trial court's decision to order spousal support, RP 59 "to help her get established in her new country." Entry of Order RP 156 lines 13-14 It is unconscionable to require that the sponsor take on responsibility for the future actions of the sponsored alien. No one knows what that person's real motives are, nor what they may do after arrival in the U.S.

In addition, the vast majority of households are two-income families. The intent of the law cannot include support if alien abandons sponsor.

Liliia absolutely knew the difference between the I-134 and I-864. The averment at trial that George had executed the affidavit of support , I-864,

is either a result of Liliia's deception of her attorney or to confuse the trial court. This again supports a conclusion that fraud to gain money is likely.

Liliia knew George's income. The Consul in Kiev showed her the packet from USCIS. Liliia testified that she knew George's income. RP 33 lines 7-10, RP pg 38 lines 19 – 22, pg 39 lines 11 – 13. The purpose of the Consular interview is to inform the alien of the financial status and any criminal record. RP 33 lines 7 – 10, CP 83 No. 11. However, she testifies that she never knew his income, RP 122 line 22, testifying that his income was three-times higher to make a claim for support through the I-134. RP 136 lines 19-21, CP 36 line 19.

IV. UNDER THE FIRST AMENDMENT, THE TRIAL COURT PROHIBITED THE PARTIES' PRACTICE OF RELIGION

The trial court refused to allow questioning about Liliia's religious beliefs on grounds of lack of relevance. RP 5 line 14-25.

One cannot prove a fact unless one is allowed to illicit testimony to a condition or conversations/communications related to that fact. Had that testimony been allowed to be entered, it would either confirm that Liliia did hold sacred beliefs, or e-mails would have shown that Liliia did misrepresent her religious beliefs in Jesus' teachings.

Refusal to hear talk about religion related to fraud is a violation of the parties First Amendment right to freedom from the government prohibiting their practice of religion. It is interference in free practice of

their religion by rejecting a religious standard as criteria by which one can choose a partner and hold that person accountable for their representations. By denying questioning about religious beliefs, of relevance in millions of marriages, the trial court imposed a governmental standard, actually the court's personal, or arbitrary standard on both George and Liliia, although e-mails admitted into evidence clearly state Liliia's religious beliefs. RP 85 line 15-16, CP 83 No. 14. George testified that his religious beliefs in Jesus' teachings were a main criteria for choosing his wife, an essential of hundreds of millions of marriages. That goes to the issue of fraud. RP 5 lines 5-13.

In a claim arising under 42 U.S.C.A. § 1983, a plaintiff must show (1) that the conduct of which he complains was committed by a person acting under color of state law and (2) that the conduct deprived Plaintiff of "rights, privileges, or immunities secured by the Constitution or laws of the United States." 42 U.S.C.A. § 1983; Parratt v. Taylor, 451 U.S. 527, 535, 108 S.Ct. 1908, 1912 (1982)

Acting as a court of law, the trial court refused to hear discussion of religion. The act of disallowing the questions denies the adjudication of the issues before the court.

Fraudulent representations of religious convictions are a legally sufficient basis upon which an annulment may be predicated.

The e-mails clearly show Liliia represented she came to the US to be George's wife, claiming she was a committed Christian, EX 13, 14, never mentioning any thought she was excited to get to the US. George relied on

her statements she was a Christian, and wanted to be married forever, not twenty-six days.

Before their marriage she knew of his religious convictions that marriage is for life, CP 83 No. 13-15, and only permitted to be entered with another committed and practicing Christian. RP 5 lines 5-13. She also represented that she would never leave him. CP 83 No. 13-15. She held herself out to be a Bible-teachings believer in Jesus and a practicing Christian. CP 83 No. 13-15, RP 4 line 17-25. Liliia knew that George was lonely and wanted to have a resolutely Bible-teachings following Christian wife. CP 83 No. 13-15 & 19, EX 19.

Liliia states that she believes in the Bible and that Jesus' teachings are to her a LAW. CP 83 item No 13-15, EX 13-15. Her reference to Ephesians 5, and specifically, verses 22-33 shows a clear and studied knowledge of what the Bible teaches about marriage. CP 83 No. 13-15, EX 13-15.

George would not have married Liliia had he known she was not a practicing Christian or that she would leave within days after arriving.

29 COA 431: What is considered a crucial factor in one marriage relationship may not be considered crucial in another. *Wolfe v Wolfe*, 76 Ill2d 92, 27 Ill Dec 735, 389 NE2d 1143 (1979); *VJS v MJB*, 249 NJ Super 318, 592 A2d 328 (1991). *Mitchell v Mitchell*, 310 A2d 837 (DC App 1973) [New York law].

Wolfe v. wolfe: “a more subjective standard has been employed, taking into consideration the effect the discovered fraud had on the complaining party's ability to continue in the marital relationship. Thus, an annulment will be granted where the fraud goes to the essence of the particular parties' marriage,...”

Helfrick v. Helfrick (1927), 246 Ill.App. 294, the Illinois case with essentially the same facts. “We deem the character of such false representations * * * to be material as a matter of law, if they in fact caused the marriage to be entered into under circumstances that no marriage would have taken place absent such false representation.” 13 Wis.2d at 341, 108 N.W.2d at 679.

Courts consider whether the complaining party would have entered into the marriage had he known the true facts and whether knowledge of the fraud makes continuation of the marriage impossible. In *Douglass v. Douglass*, The court ...stat[ed] that the test of the sufficiency of the allegations is “whether the false representations or concealment were such as to defeat the essential purpose of the injured spouse inherent in the contracting of a marriage.” (148 Cal.App.2d at 868-69, 307 P.2d at 675.) The court further held:

In *Bilowit v. Dolitsky*, the plaintiff was induced to marry the defendant on his representation that he was a practicing Orthodox Jew. ...Plaintiff learned that defendant had misrepresented his religious convictions ...The court stated:“To plaintiff the religious beliefs and convictions of her husband were essential to her marriage. ...We hold that fraudulent representations of religious convictions are a legally sufficient basis upon which an annulment may be predicated. ...When one partner has discovered that unwittingly he has been duped into a violation of his religious beliefs that discovery may well make continuation of the relationship impossible. In such an instance the fraud eliminates the innocent party's consent to the relationship and goes directly to the essence of the marriage relationship, ...the essence of the marriage is not merely “flesh and bones” but heart and soul and mind as well.

E. Conclusion

Kozniuk induced Slaughter to marry by fraud and misrepresentation to gain entry to the United States, to avoid monetary expense, and with the intent to further con Slaughter into sponsoring her for permanent resident status.

If indeed the marriage was entered on the basis of genuine intention to remain married, then Kozniuk would have remained with Slaughter after

visits to USCIS and being informed that she was safe from deportation after marriage. Kozniuk had no more need of Slaughter after Slaughter refused to sponsor her for immediate permanent resident status. RP 117

Cohabitation is an essential element of marriage. George ceased to cohabit with Liliia immediately upon discovery of the fraud. When George realized that the marriage was a sham to obtain admittance to and remain in the USA, that Liliia just wanted sponsorship with a very likely outcome of eventual abandonment, as observed and noted by the trial court, George refused to cohabit. One of the essential requirements for a valid marriage, cohabitation, was not performed after the discovery of fraud. This is grounds for invalidation.

There is no evidence that supports the claims made by Liliia. Liliia abandoned the relationship at the time of Slaughter's unwillingness to sponsor her for a green card, only weeks after the marriage. All this points to her recklessness in making the promises she made. It is not a real marriage, not for the purpose of sharing a life together as husband and wife.

To permit the institution of marriage to be dissolved so flippantly makes a travesty of the solemnity of and seriousness of the commitment to marry. For more than half of the US population, a sacred act.

Liliia misrepresented her location from the very beginning.

Liliia had already been seeking entrance to the USA.

Liliia could have sought a marriage partner from Western Europe, or Australia. She sought a marriage partner in the US to gain passage to the US through a US sponsor.

George sponsored Jenya to come to the USA, paid for his medical exams , visa-processing costs, paid for his travel expenses, registered Jenya in School, and paid for lunches for months. George paid for his activity card for a school he was not required to attend, bought him a new six-hundred dollar bed rather than leaving him to use old beds. George had a long established relationship with Jenya for years, petitioned for Jenya to be allowed to participate in athletics at school for his socialization well-being, and paid for Jenya's phone account. Slaughter has a history of support and care of his own children and young adults. It is extremely improbable that George wanted to deport Jenya.

Nothing supports Liliia's accusations. Her son, who lived in the home, and is a very conscious and aware young man, was not brought to testify; no evidence whatsoever.

Refusal by George to sign over the car pink-slip supports his contention that George was already highly disturbed by Kozniuk's single-minded efforts to secure the permanent resident status through his affidavit of

support although USCIS rules permit two years before application for adjustment of status; and that not being the only way to get a greencard.

Abandonment of the relationship, without cause, and within days after the marriage, having no personal expenses for the immigration application costs, travel costs, and none of the marriage costs, constitutes such a rash, irresponsible, and reckless act as to be deemed fraud and certainly grossly inequitable.

The fundamental principle that cases shall be determined based upon the evidence and its merits is ignored when relevant documents and recordings to refute testimony and prove a matter are not permitted as evidence. Slaughter raised all these issues at trial. RP 84 line 8 – 24. There is a prejudice in the decision of the court when testimony is permitted to serve as evidence while major documents are not permitted to oppose or refute a supposition's probability, certainty or falsity.

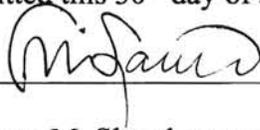
To issue a decree of divorce aids Liliia in her abuse of process. A valid marriage gives Liliia the very documentation that she sought through misrepresenting her true intentions and belief-system; the ability to deceive the immigration service and misrepresent that the marriage was valid and that she is now divorced, which allows her to apply for adjustment of status. The time-frames of the divorce misinformed USCIS.

The trial court misunderstood the evidence, denied valid evidence, made incorrect or no inferences, misapplied the evidence, and came to an untenable conclusion.

The evidence applied in the circumstances of this case is clear and convincing to reverse the judgment, and grant the invalidation.

For the reasons set out herein, George Slaughter, Appellant, respectfully requests that the Court of Appeals Invalidate the marriage based upon fraud that goes to the essence of this marriage, and dismiss claim for support based upon an unenforceable I-134 affidavit; find that the trial court erred by abuse of discretion in determination of facts and their application to the circumstances of this case, and erred when it disallowed police report, recordings, testimony and documentary evidence related to misrepresentation of religious beliefs. Invalidate the marriage and deny support, or remand the case to the trial court for further proceedings for evidence or a new trial.

Respectfully submitted this 30th day of July, 2012



George M. Slaughter, pro se
1967 East Gloucester Street
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CERTIFICATE OF SERVICE

I, George M. Slaughter, hereby certify that on July 31, 2012 I served a true and correct copy of the BRIEF on the parties named herein, in the manner noted:

Lilia V. Kozniuk
1821 N Road 36
Pasco, WA 99301

US Mail postage pre-paid



George M. Slaughter, Pro Se