[Cite as *Davis v. Davis*, 2012-Ohio-2088.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

John J. Davis

Appellee

v.

Svetlana A. Davis

Appellant

Court of Appeals No. WD-11-006

Trial Court No. 2001DR188

DECISION AND JUDGMENT

Decided: May 11, 2012

* * * * *

Jeffrey P. Nunnari, for appellee.

Alan Kirshner, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} Appellant, Svetlana A. Davis, appeals from a modification of an award of spousal support entered by the Wood County Court of Common Pleas, Domestic Relations Division, in the above-captioned case. For the reasons that follow, we affirm the judgment of the trial court.

{¶ 2} Appellee, John J. Davis, a United States citizen, and appellant, formerly a Ukranian citizen, met through the internet. Eventually, appellee traveled to the Ukraine and proposed to appellant. The parties were married in Perrysburg, Ohio, on December 28, 1999.

{¶ 3} Appellee, pursuant to the Immigration and Nationality Act ("INA"), 8 U.S.C. 1183a, also known as Sec. 213A of the INA, executed an Affidavit of Support agreeing to support appellant. The Affidavit of Support is also known, under Sec. 213A of the INA, as Form I-864. The Affidavit of Support obligates the affiant sponsor -- in this case, appellee -- to guarantee support for the sponsored alien --in this case, appellant -- at a level of no less than 125 percent of the Department of Health and Human Services Poverty Guidelines. 8 U.S.C. 1183a.

{¶ 4} On May 7, 2002, appellee filed a complaint for annulment or, in the alternative, for divorce. In response, appellant filed an answer and counterclaim for legal separation. The trial court, on January 29, 2004, dismissed appellee's complaint for annulment and/or divorce, and granted appellant a legal separation. Although separated, the parties are still married. In connection with the legal separation decree, the trial court also made an award of spousal support to appellant of $830 per month, beginning August 1, 2003. This award was ordered for a period of 24 months.

{¶ 5} The amount and duration of the award was based upon the trial court's consideration of the factors enumerated in R.C. 3105.18. Among other factors, the trial court found that appellee had significantly higher earnings and abilities than appellant,

and that appellant had medical difficulties and a language barrier which precluded her from obtaining meaningful employment in the near future. Additionally, the trial court found that since appellee was purposefully and voluntarily responsible for bringing appellant to the United States, and since he executed "a federal document," obligating him to support appellant, a larger support award was warranted.

{¶ 6} Although the Affidavit of Support was apparently considered by the trial court in awarding spousal support, the court refused to specifically enforce the Affidavit of Support and ordered that "any specific suit or enforcement of the § 213(A) of the Illegal Immigration Reform and Immigrant Responsibility Act, a federal provision, be pursued in an appropriate federal court."

{¶ 7} Appellee appealed the decision and, in *Davis v. Davis*, 6th Dist. No. WD-04-020, 2004-Ohio-6892, this court reversed, concluding that the immigration statutes and related regulations clearly gave appellant standing to enforce the Affidavit of Support and that the Wood County Court of Common Pleas had the jurisdiction to enforce it. *Id.* at ¶ 21. As a result, the case was remanded to the trial court.

{¶ 8} Before the trial court concluded its proceedings following the remand, appellee filed an action in the United States district court against the United States of America and appellant. The United States district court dismissed the matter, finding that appellee's case amounted to an impermissible attempt to appeal this court's judgment ordering the common pleas court to enforce the Affidavit of Support. Appellee appealed this dismissal to the Sixth Circuit Court of Appeals, and the Sixth Circuit affirmed the

judgment of the district court. *See Davis v. United States of America*, 499 F.3d 590 (6th Cir.2007).

{¶ 9} In a hearing held before a magistrate on October 28, 2005, counsel for appellant requested that the trial court, in enforcing the Affidavit of Support, continue the previous order of support "until such time as * * * the federal law would require it to change." Interpreting the applicable federal law, the trial court stated that it believed appellant was entitled to ten years of support. Counsel for appellant stated that "it could be ten years or it could be, you know, forever." Ultimately, the trial court concluded that the new order of support would extend the previous order of support for an additional eight years, and that the support award would be modifiable on the motion of either party as to duration and amount. No one appeared on behalf of appellee at this hearing.

{¶ 10} On August 11 and 29, 2006, the trial court issued magistrate's decisions finding that it was "reasonable and appropriate" to extend its prior order of support for an additional eight years, for a total of ten years of support. Both orders contained language stating that the order of support was to be subject to the continuing jurisdiction of the common pleas court and would be modifiable as to amount and term in accordance with the Immigration and Naturalization Act of 1996.

{¶ 11} Appellee objected to the magistrate's decisions. On October 18, 2007, the trial court denied appellee's objections and ordered the payment of spousal support, in the amount of $830 per month, to begin August 1, 2003, and to continue until August 1, 2013, when the award would come back before the court for review. The judgment entry

also specified that the spousal support award would be subject to the continued jurisdiction of the common pleas court and would be modifiable, on the motion of either party, as to amount and duration in accordance with the Immigration and Naturalization Act of 1996.

{¶ 12} Appellee appealed the 2007 judgment. This court dismissed the appeal for being untimely filed. Appellee filed a motion for reconsideration, and when that was denied, he attempted to appeal to the Ohio Supreme Court. The Ohio Supreme Court refused to accept jurisdiction.

{¶ 13} On March 3, 2008, appellee filed a motion to terminate spousal support on the grounds that applicable federal authority eliminated any further requirement of appellee to support appellant. Specifically, appellee argued that he was no longer under any federally-imposed duty to support appellant, because appellant had earned and/or was otherwise entitled to receive credit for "40 qualifying quarters of work" as that term is used in the I-864 Affidavit of Support and the related federal statutes and regulations.

{¶ 14} Because appellee had stopped paying the previously-ordered spousal support, appellant, on April 21, 2008, filed a motion to show cause, for lump sum judgment, and for attorney fees. Included in the motion was a request for past-due spousal support in the amount of $25,341, and for attorney fees and expenses for "post-divorce" proceedings including appeals and other legal actions initiated by appellee in federal court.

{¶ 15} The magistrate, in a decision filed on April 6, 2010, ultimately concluded that, pursuant to applicable federal authority, appellee's obligation to support appellant under the I-864 Affidavit of Support terminated by operation of law on August 31, 2005. The magistrate further determined that appellee's spousal support obligation, in accordance with the federal law, had been in effect for a period of 25 months, in the monthly amount of $830 plus administrative fees, and that the support obligation had commenced on August 1, 2003 and had terminated on August 31, 2005. The magistrate additionally denied appellant's motion to show cause and for lump sum judgment.

{¶ 16} On December 14, 2010, the trial court issued a judgment entry denying the motion to show cause, for lump sum judgment and for attorney fees, and granting in part the motion to terminate spousal support, in accordance with the magistrate's decision.

{¶ 17} Appellant appealed the trial court's judgment, raising the following assignments of error:

> I. "The trial court erred in failing to give res judicata effect to the 2007 order."
>
> II. "Misconstruing U.S.C. 1183(a) [sic], the trial court erred when it credited [appellant] with both the Social Security quarters she earned and the Social Security quarters [appellee] earned."
>
> III. "The trial court erred by failing to give effect to Title II of the Social Security Act, 42 U.S.C. § 413, which provides that not more than four quarters of coverage may be credited to any calendar year."

IV. "In the absence of certified records of the Social Security Administration, the trial court erred in attempting to calculate Social Security credits."

V. "The trial court erred in failing to find [appellee] in contempt."

VI. "The trial court erred in failing to award [appellant] attorney fees."

{¶ 18} Because assignments of error I, II, III, and IV involve overlapping issues, they will be considered together, but not necessarily in order, in this analysis.

{¶ 19} The Affidavit of Support, INS Form I-864, is a legally binding contract between the affiant sponsor and the United States, and is enforceable against the affiant sponsor by, among others, the sponsored alien. *See* 8 U.S.C. 1183a(a)(1*)*; *Davis v. Davis*, 2004-Ohio-6892, ¶ 15. Historically, the INS used the Affidavit of Support to ensure that aliens would not become dependent on public assistance for financial support. *Id*. at ¶ 14. Currently, the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), 8 U.S.C. 1181 et seq., requires the Affidavit of Support whenever an alien may become dependent on federal means-tested benefits. *See id.*

{¶ 20} As indicated above, the sponsor, in executing the Affidavit of Support, obligates himself or herself to maintain the sponsored alien at or above a financial level equal to 125 percent of the official poverty line during the period in which the affidavit is enforceable. 8 U.S.C. 1183a(a)(1)(A).

{¶ 21} Regarding termination of the period of enforceability, 8 U.S.C. 1183a(a)(3) relevantly provides:

> (A) In general
>
> An affidavit of support is not enforceable after such time as the alien (i) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act [42 U.S.C.A. § 401 et seq.] or can be credited with such qualifying quarters as provided under subparagraph (B), and (ii) in the case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any Federal means-tested public benefit (as provided under section 1613 of this title) during any such period.
>
> (B) Qualifying quarters
>
> For purposes of this section, in determining the number of qualifying quarters of coverage under title II of the Social Security Act [42 U.S.C.A. § 401 et seq.] an alien shall be credited with –
>
> (i) * * *
>
> (ii) *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. [Emphasis added.]

{¶ 22} Likewise, federal regulations impacting an Affidavit of Support, 8 C.F.R. 213a.2, relevantly state:

> The support obligation and the change of address reporting requirement imposed on a sponsor, substitute sponsor and joint sponsor under an affidavit of support, and any household member's support obligation under an affidavit of support attachment, all *terminate by operation of law* when the sponsored immigrant:
>
> (A) * * *
>
> (B) Has worked, or can be credited with, 40 qualifying quarters of coverage under title II of the Social Security Act, 42 U.S.C. 401, et seq., provided that the sponsored immigrant is not credited with any quarter beginning after December 31, 1996, during which the sponsored immigrant receives or received any Federal means-tested public benefit * * * 8 C.F.R. § 213a.2(e)(2)(i)(B). [Emphasis added.]

{¶ 23} Appellant argues in her second and third assignments of error that the trial court erred in calculating the quarters of coverage attributable to appellant when it combined the number of quarters earned by appellant with the number of quarters earned by appellee. In support of her position that the quarters of coverage earned by appellant cannot be combined with those earned by appellee in determining the enforceability of an Affidavit of Support, appellant cites 8 U.S.C. 1183a(a)(3)(A), wherein it is stated that an Affidavit of Support is not enforceable after an alien has "worked 40 qualifying quarters of coverage * * * *or* can be credited with such qualifying quarters [worked by a spouse of such alien during the marriage * * *]." (Emphasis added.)

{¶ 24} In conducting our examination of the applicable law, we note that federal regulations expressly incorporate the instructions on INS Form I-864 as part of the regulations governing the Affidavit of Support. 8 C.F.R. 103.2(a). The current instructions for Form I-864, Affidavit of Support -- which were revised as of October 18, 2007, but were never taken into account by either the trial court or trial counsel at that time – are informative with respect to this case in their treatment of intending immigrants *who do not need to file* the form. Immigrants who do not need to file Form I-864 are described in the accompanying instructions as "[a]ny intending immigrant who has earned or can be credited with 40 qualifying quarters (credits) of work in the United States." The instructions provide in connection with these immigrants that "*[i]n addition to their own work*, intending immigrants may be able to secure credit for work performed by a spouse during the marriage * * *." (Emphasis added.) Thus, the instructions expressly allow immigrants to obtain credit both for their own work and for work performed by a spouse during the marriage; they do not require the immigrant to choose one or the other.

{¶ 25} Also informative for purposes of this analysis are the instructions for INS Form I-864W. Form I-864W is intended for use by an immigrant seeking a visa who claims that he or she has already earned the necessary 40 qualifying quarters of coverage, such that a Form I-864 Affidavit of Support is not required. The instructions for Form I-864W state that the immigrant is to use the form if he or she has earned (or can be credited with) 40 qualifying quarters of coverage under the Social Security Act. The

instructions further provide that an immigrant can acquire 40 qualifying quarters in the following ways: (a) "Working in the United States for 40 quarters for which you receive the minimum income established by the Social Security Administration;" or (b) "By being credited under § 213(a)(3)(B) of the Immigration and Nationality Act with quarters used by your spouse during the marriage * * * ;" or (c) "*A combination of the above*." (Emphasis added.) Again, the language contained in the form expressly allows for the combination of credit for hours worked by the immigrant and the immigrant's spouse.

{¶ 26} Upon reading the regulations and related instructions, both alone and in pari materia, we conclude that the trial court, in reaching its decision in this case, did not err in combining the credit for hours worked by appellant with those worked by appellee. Accordingly, appellant's second assignment of error is found not well-taken.

{¶ 27} Arguing against this conclusion, appellant, in her third assignment of error, cites 42 U.S.C. 413(a)(B), which provides that: "not more than one quarter of coverage may be credited to a calendar quarter;" and "no more than four quarters of coverage may be credited to any calendar year * * *." 42 U.S.C. 413(a)(B)(vi) and (vii). We find that such provision, contained in the Social Security Act, and specifically dealing with federal old-age, survivors, and disability insurance benefits, does not alter the calculation in this case. Although "qualifying quarters" may or may not count for purposes of eligibility for Social Security benefits, they do count for purposes of determining the "40 qualifying quarters of work" threshold that is set forth in Form I-864 and the statutes and regulations that give rise to it. Further, even if the maximum number of quarters *earned* by an

immigrant cannot exceed four, the immigrant, at least under circumstances such as the ones currently before us, can be *credited* with additional qualifying quarters of coverage from his or her spouse.

{¶ 28} For all of the foregoing reasons, appellant's third assignment of error is found not well-taken.

{¶ 29} Appellant argues in her first assignment of error that the trial court erred in failing to give res judicata effect to its 2007 order. We disagree.

{¶ 30} "The doctrines of res judicata and collateral estoppel preclude relitigation of a point of law or fact that was at issue in a former action between the same parties and was passed upon by a court of competent jurisdiction." *Vectren Energy Delivery of Ohio, Inc. v. Pub. Util. Comm.*, 113 Ohio St.3d 180, 2006-Ohio-1386, 863 N.E.2d 599, ¶ 30. Appellant argues that "[t]he October 17, 2007 order decided that [appellee] was to pay support of $830.00 per month and is res judicata as to all events prior to the order, all issues decided, and all arguments [appellee] made or could have made." In making this argument, however, appellant ignores the fact that the trial court, at appellant's trial counsel's behest, expressly retained jurisdiction to modify the Affidavit of Support in accordance with the applicable federal law.

{¶ 31} Appellant goes on to cite Ohio law standing for the proposition that a trial court can modify an order of spousal support only where there is a finding of a change of circumstances. *See Leighner v. Leighner*, 33 Ohio App.3d 214, 215, 515 N.E.2d 625 (10th Dist.1986). Appellant alleges that because appellee did not allege a change of

circumstances occurring after the 2007 order, the trial court lacked jurisdiction to change the order. We are not persuaded by appellant's argument.

{¶ 32} First, we note that the authority relied upon by appellant deals with R.C. 3105.18, an Ohio statute that provides for the awarding of spousal support in connection with a divorce, legal separation, annulment, or dissolution of marriage. In the instant case, we are dealing not with this type of a state-sanctioned spousal support award – although that was the nature of the initial support award as ordered in the January 23, 2004 decree of legal separation -- but rather with the enforcement of a federal Affidavit of Support, which, as indicated above, is in the nature of a contract between the affiant sponsor and the United States. See 8 U.S.C. 1183a(a)(1); *Davis v. Davis*, 2004-Ohio-6892, ¶ 15. Given the nature of the matter that is before us, we do not find the provisions of R.C. 3105.18 to be applicable to a determination of this case.

{¶ 33} Applicable federal law provides that once the immigrant can be credited with more than 40 qualifying hours of work, the Affidavit of Support terminates by operation of law. See 8 U.S.C. 1183a(a)(3); 8 C.F.R. 213a.2. Accordingly, once the trial court recognized that appellant had achieved the 40 qualifying hour threshold, it was constrained to give effect to its provisions.

{¶ 34} Assuming, arguendo, that the state law provisions do apply to enforcement of an Affidavit of Support – although we specifically conclude that they do not -- we find they would be of no avail to appellant in this case, because appellant herself requested the ability to seek modification of the Affidavit of Support in accordance with federal law.

In stipulating to the modification provisions, appellant waived any right to appeal them. *Compare Heaton v. Heaton*, 6th Dist. No. L-08-1434, 2010-Ohio-6214 (2010)(holding that, for purposes of appeal, appellant, by stipulating to a modification of the temporary orders and stipulating to the effective date of the modification, waived his right to challenge temporary child and spousal support orders).

{¶ 35} Appellant is likewise precluded from attacking the 2007 order under the doctrine of invited error. The doctrine of invited error provides that an appellant cannot attack a judgment for errors committed by the appellant, for errors that the appellant induced the court to commit, or for errors into which the appellant either intentionally or unintentionally misled the court, and for which the appellant is actively responsible. *Daimler/Chrysler Truck Financial v. Kimball,* 2d Dist. No. 2007-CA-07, 2007-Ohio-6678, ¶ 40. "Under this principle, a party cannot complain of any action taken or ruling made by the court in accordance with that party's own suggestion or request." *Id.* The fact that appellant invited the so-called error of which she now complains – that is, the continued jurisdiction of the court to modify the Affidavit of Support in accordance with federal law -- provides an additional basis for our conclusion that the trial court acted reasonably in granting appellee's motion to modify the 2007 order.

{¶ 36} Finally, even if R.C. 3105.18 were applicable, and appellant was not otherwise precluded from attacking the trial court's judgment, appellant's challenge would yet be unsuccessful. First, the trial court properly retained jurisdiction to modify its award, thus fulfilling the state law requirement set forth in R.C. 3105.18(E)(1). And

second, the circumstances of the parties did, in fact, change, to the extent that it was finally recognized that, under the applicable federal law, appellee's previously existing obligation under the Affidavit of Support had, in fact, come to an end. Thus, the requirement for changed circumstances, as set forth in R.C. 3105.18(E) was likewise satisfied. Accordingly, we find that the matter was properly before the trial court for review and modification of the trial court's previous order of support.

{¶ 37} On the basis of the foregoing, we find appellant's first assignment of error not well-taken.

{¶ 38} Appellant argues in her fourth assignment of error that the trial court erred in relying upon the parties' tax returns, rather than upon certified copies of Social Security Administration records, in order to determine the number of qualifying work quarters that were actually earned by the parties. We disagree. The tax returns and other income verifying documents that were relied upon in this case were properly identified, authenticated, and admitted into evidence. In addition, there is no requirement that a court look only to officially certified records of the Social Security Administration when making findings of fact relative to a party's income for support, or for any other purpose of this nature. *See, e.g., Lee v. Astrue*, D. Hawaii No. 09-00245 ACK-KSC, WL 346452 (Jan. 29, 2010) (tax records were properly used to determine Social Security disability insurance benefits). For the foregoing reasons, appellant's fourth assignment of error is found not well-taken.

{¶ 39} Appellant argues in her fifth assignment of error that the trial court erred in failing to find appellee in contempt, because appellee stipulated that he did not make his support payments and thereby "made a conscious decision to violate the court order [of support]." The magistrate, in addressing this matter relevantly stated in his conclusions of law:

> 23. Regarding [appellant's] Motion to Show Cause, for Lump Sum Judgment and for Attorney Fees, the Court * * * concludes that the difference between the total of what [appellant] and the Agency actually received, short of escrowed funds ($22,018.40 - $4,081.50 = $17,936.90), and what [appellee] is obligated to pay ($21,165.00) can be made up from the escrowed funds held by the Agency. * * *
>
> 24. Given these circumstances, while a claim may have been reasonably made in April, 2008, that [appellee] was in arrears in his support payments, there exists sufficient escrowed funds with the Agency to make a disbursement to [appellant] to complete [appellee's] support obligations, as calculated above. Further, [appellee's] position at the hearing that he failed to pay support (and this point is also uncertain to the Court, as there was a withholding order in the October 18, 2007 Judgment Entry, and presumably with the Agency) based on his, and his counsel's interpretation of his support obligations under the federal law referred to in this Court's October 18, 2007 Judgment Entry is somewhat

understandable. The extent of legal authority on this matter is limited. A basis for contempt has not been established.

{¶ 40} The applicable standard of review of a court's decision to grant or deny a motion for contempt is abuse of discretion. *Arthur v. Arthur*, 130 Ohio App.3d 398, 720 N.E.2d 176 (1998). To find an abuse of discretion, we must conclude that the trial court's decision was unreasonable, arbitrary, or unconscionable and not merely an error of law or judgment. *Id.*

{¶ 41} Here, where the record reveals that appellee may or may not have actually failed to pay support, where the amount due and owing could be paid with funds already in escrow, and where the trial court found that any such failure to pay on the part of appellee was "understandable," based on appellee's and appellee's counsel's interpretation of appellee's support obligations under the federal law, we do not find that the trial court abused its discretion in failing to find appellee in contempt. Therefore, appellant's fifth assignment of error is found not well-taken.

{¶ 42} Finally, appellant argues in her sixth assignment of error that the trial court erred in failing to award her attorney fees. An appellate court reviewing a trial court's award of attorney fees will not reverse the trial court's decision absent an abuse of discretion. *Donnell v. Donnell*, 6th Dist. No. S-94-031, 1995 WL 557322 (Sept. 22, 1995).

{¶ 43} Regarding the awarding of attorney fees, R.C. 3105.18 relevantly provides:

(G) If any person required to pay alimony under an order made or modified by a court on or after December 1, 1986, and before January 1, 1991, or any person required to pay spousal support under an order made or modified by a court on or after January 1, 1991, is found in contempt of court for failure to make alimony or spousal support payments under the order, the court that makes the finding, in addition to any other penalty or remedy imposed, shall assess all court costs arising out of the contempt proceeding against the person and shall require the person to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt. R.C. 3105.18(G).

{¶ 44} Because appellee was not found in contempt, the trial court properly denied appellant's request for attorney fees under R.C. 3105.18(G). In addition, appellant has failed to cite any other authority or legally cognizable grounds for an award of attorney fees in this case. Accordingly, we find that the trial court properly denied appellant's request for attorney fees. Appellant's sixth assignment of error is, therefore, found not well-taken.

{¶ 45} For all of the foregoing reasons, the judgment of the Wood County Court of Common Pleas, Domestic Relations Division, is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J. _____

_____
JUDGE

Stephen A. Yarbrough, J. _____
CONCUR.

_____
JUDGE

Arlene Singer, P.J., dissents.

SINGER, P.J.

{¶ 46} I respectfully dissent. 8 U.S.C. 1182 and its associated provisions came into federal law as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193 (1996). The purpose of these provisions was to prevent aliens coming to the United States from becoming public charges, assuring that sponsored aliens are self-sufficient and do "not burden the public benefits system." Title IV, Sec. 400(4), H.R. Conf. Rep. No. 104-725, 104th Cong., 2d Sess., 1996 U.S.C.C.A.N 2649 (July 30,1996). (Submitted by Mr. Kasich.)

{¶ 47} 8 U.S.C. 1183a(a)(1) requires that an alien who would otherwise be likely to become a public charge for want of sufficient assets or financial resources, 8 U.S.C. 1182(a)(4), may be admitted into the country only on the submission of an affidavit by a sponsor, "in which the sponsor agrees to provide support to maintain the sponsored alien at an annual income that is not less than 125 percent of the Federal poverty line during the period in which the affidavit is enforceable." The affidavit is enforceable until, "such

time as the alien (i) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act [42 U.S.C.A § 401 et seq.] or can be credited with such qualifying quarters as provided under subparagraph (B) * * *." *Id.* at Section (a)(3)(A).

{¶ 48} Subparagraph (B) provides in material part,

> (B) Qualifying quarters
>
> For purposes of this section, in determining the number of qualifying quarters of coverage under title II of the Social Security Act [42 U.S.C.A. 401 et seq.] an alien shall be credited with—
>
> (i) all of the qualifying quarters of coverage as defined under title II of the Social Security Act worked by a parent of such alien while the alien was under age 18, and
>
> (ii) 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.

{¶ 49} To me, the meaning of these provisions is clear. Congress intended that, as a condition of immigration on sponsorship, the sponsor guarantees that the alien be financially supported at a minimal degree so as not to become a drain on the public weal for 40 quarters, ten years. Recognizing that a child under age 18 or a spouse who may not be in the labor market may not earn a sufficient amount to qualify under the Social Security definition of a qualifying quarter, Congress made provision that during periods when a child or a spouse is not gainfully employed, the qualifying quarter earned by the

alien's parent or spouse may be counted instead. The qualifying quarters of the alien are then added to the qualifying periods earned by the parent or the spouse of the alien for only those periods of time during which the alien does not work. When the tacking of these qualifying quarters reaches ten years, the guarantor's obligation is complete.

{¶ 50} Under the majority's analysis, applying a double dip to the qualifying quarters, the ten year period whereby the government is guaranteed that the sponsored alien will not become a public charge is substantially reduced. I do not believe that this is in conformity with the intent of the drafters of the law. Accordingly, I would find appellant's second and third assignments of error well-taken.