

*BELEVICH V. THOMAS*: ELEVENTH CIRCUIT DECLINES TO RECOGNIZE  
EQUITABLE DEFENSES AS VIABLE GROUNDS FOR TERMINATING FINANCIAL  
OBLIGATIONS OWED TO SPONSORED IMMIGRANTS UNDER FEDERAL LAW

ABIGAIL WILLIS\*

In *Belevich v. Thomas*,<sup>1</sup> the United States Court of Appeals for the Eleventh Circuit addressed as a matter of first impression whether an immigrant’s sponsor may be excused from her statutory obligation under 8 U.S.C. § 1183a to financially support the immigrant by asserting the equitable defenses of unclean hands, anticipatory breach, and equitable estoppel.<sup>2</sup> In this case, the Department of Homeland Security granted the appellee, Valentin Belevich, admission into the United States on the basis of Form I-864 affidavits executed by the appellants—his wife, Tatiana Kuznitsynna, and her daughter, Klavdia Thomas (“the sponsors”).<sup>3</sup> These affidavits promised the United States that the sponsors “would support Belevich at 125% of the poverty income level” if he was granted a visa.<sup>4</sup> However, after Belevich was accused of sexually abusing Thomas’s six-year-old daughter, the sponsors refused to provide him with further financial support.<sup>5</sup> Belevich brought this suit to enforce the sponsors to continue to satisfy their financial obligation, and in response the sponsors asserted several equitable defenses.<sup>6</sup> The United States District Court for the Northern District of Alabama rejected the sponsors’ defenses as a matter of law, and a jury awarded Belevich damages.<sup>7</sup> On appeal, the Eleventh Circuit affirmed the district court’s ruling, holding that such defenses are “foreclosed by the statute and regulation that govern the Form I-864 affidavit, as well as the text of the affidavit itself.”<sup>8</sup>

Under federal law, if it is likely that an alien will become a public charge, then he is ineligible to receive a visa to be admitted into the United States.<sup>9</sup> It is presumed that “[a] family-based immigrant . . . is likely to

---

\* Junior Editor, *Cumberland Law Review*, Candidate for Juris Doctor, May 2023, Cumberland School of Law; B.A. English, August 2019, The University of Alabama.

<sup>1</sup> *Belevich v. Thomas*, No. 19-14668, 2021 U.S. App. LEXIS 32501, at \*1 (11th Cir. Nov. 1, 2021).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at \*1–2.

<sup>6</sup> *Id.* at \*2.

<sup>7</sup> *Belevich*, 2021 U.S. App. LEXIS 32501, at \*2, \*4.

<sup>8</sup> *Id.* at \*2.

<sup>9</sup> *Id.* (quoting 8 U.S.C. § 1182(a)(4)(A)).

become a public charge[;]”<sup>10</sup> however, an immigrant can rebut this presumption when a sponsoring relative executes a Form I-864 affidavit.<sup>11</sup> The Form I-864 affidavit is an “affidavit of support” by which the sponsoring relative promises to “support the immigrant at an annual income that is not less than 125 percent of the Federal poverty line.”<sup>12</sup> The Form I-864 affidavit that the sponsors here executed stated that their sponsorship of Belevich would not end upon divorce and that their sponsorship would end only “if he became a citizen, worked forty quarters, no longer had lawful permanent resident status and departed the United States, attained a new affidavit of support, or died.”<sup>13</sup> The Department of Homeland Security accepted these affidavits and subsequently issued a visa to Belevich based on the sponsors’ promise to provide him with financial support.<sup>14</sup>

After living with Belevich in the United States for several years, Kuznitsyna requested a divorce from Belevich while he was in Russia visiting his mother, and did not allow him back into their home when he returned to the United States.<sup>15</sup> After Kuznitsyna filed for divorce and obtained a protection order from abuse against Belevich, the sponsors ceased providing Belevich with financial support.<sup>16</sup> Thereafter, Belevich was criminally charged for the sexual abuse of Thomas’s six-year-old daughter and possession of child pornography.<sup>17</sup>

Belevich sued the sponsors in district court for breaching their Form I-864 affidavits.<sup>18</sup> In response, the sponsors argued that “non-statutory considerations may terminate their obligation to support Belevich” and “raised the affirmative defenses of unclean hands, anticipatory breach, and equitable estoppel.”<sup>19</sup> The district court rejected the sponsors’ argument by first barring any discovery related to the pending criminal charges against Belevich, determining that such charges were irrelevant to the statute in question.<sup>20</sup> Second, in ruling on Belevich’s motion for summary judgment, the district court agreed that the sponsors had breached their Form I-864 affidavits by failing to financially support Belevich in the absence of any

---

<sup>10</sup> See *id.* (citing 8 C.F.R. §§ 213a.2(a)(1)(i)(A), (a)(2)(i)).

<sup>11</sup> See *id.* (citing 8 U.S.C. §§ 1182(a)(4)(C)(ii), (a)(4)(D)).

<sup>12</sup> *Id.* (quoting 8 U.S.C. § 1183a(a)(1)(A)); see generally 8 U.S.C. §§ 1182(a)(4)(C)(ii), (a)(4)(D); 8 U.S.C. § 1183a(a)(1)(A); 8 C.F.R. §§ 213a.2(a)(1)(i)(A), (a)(2)(i)).

<sup>13</sup> *Belevich*, 2021 U.S. App. LEXIS 32501, at \*2–3.

<sup>14</sup> *Id.* at \*3.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> See *id.* at \*3 (citing 8 U.S.C. § 1183a(a)(1)(B)) (“[A] support affidavit is ‘legally enforceable against the sponsor by the sponsored alien.’”).

<sup>19</sup> *Belevich*, 2021 U.S. App. LEXIS 32501, at \*3–4.

<sup>20</sup> *Id.*

qualifying terminating event.<sup>21</sup> In its ruling, the district court rejected the sponsors' argument that their obligations ended either when the family court issued the protective order against Belevich or when he was charged with criminal conduct.<sup>22</sup> Accordingly, the district court granted summary judgment in favor of Belevich, and he was later awarded damages by a jury.<sup>23</sup>

The sponsors appealed to the Eleventh Circuit, arguing that "the district court erred in concluding that the statute, regulation, and affidavit provide the exclusive grounds for terminating their support obligations."<sup>24</sup> Reviewing the district court's decision *de novo*,<sup>25</sup> the Eleventh Circuit addressed for the first time whether a sponsor may terminate his or her obligation to support an immigrant in the absence of a terminating event enumerated in the statute, regulations, or affidavits.<sup>26</sup>

Before the court could answer this question, the Eleventh Circuit first addressed whether this question was governed by federal or state contract law.<sup>27</sup> In doing so, the court looked to the applicable statute and regulations that "define[s] the scope of the sponsors' obligations, including the relevant terminating events."<sup>28</sup> First, the court noted that the affidavit of support is merely a document that incorporates the sponsors' statutory obligations and codifies "the [sponsors'] agreement to abide by them."<sup>29</sup> Second, the court recognized that the statute allows the sponsored immigrant to enforce an affidavit of support against the immigrant's sponsor by creating a federal cause of action with enforcement rights that are otherwise unavailable to the immigrant under contract law.<sup>30</sup> Lastly, the court noted the statute only mentions state law in the context of remedies to enforce a judgment against a sponsor.<sup>31</sup> For all of these reasons, the court determined that only federal

---

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at \*4–5. Before discussing the merits of the sponsors' appeal, in a footnote the Eleventh Circuit rejected Belevich's argument that the sponsors failed to preserve their defense argument for appeal. *Belevich*, 2021 U.S. App. LEXIS 32501, at \*4–5, n.1.

<sup>25</sup> *Belevich*, 2021 U.S. App. LEXIS 32501, at \*5 (citing *United States v. Bryant*, 996 F.3d 1243, 1251 (11th Cir. 2021)).

<sup>26</sup> *Id.* (first citing *Erler v. Erler*, 824 F.3d 1173, 1177–80 (9th Cir. 2016); and then citing *Wenfang Liu v. Mund*, 686 F.3d 418, 422–23 (7th Cir. 2012)) (noting that while this is a question of first impression for the Eleventh Circuit, the Ninth Circuit and Seventh Circuit have rejected the argument that there are other grounds for terminating a sponsor's obligation outside of the enumerated events listed in the statute, regulation, and affidavit).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* (first citing 8 U.S.C. § 1183a(a)(1); and then citing 8 C.F.R. §§ 213a.2(c)–(e)).

<sup>29</sup> *Id.* (alteration in original) (quoting *Astra USA, Inc. v. Santa Clara Cnty.*, 563 U.S. 110, 118 (2011)).

<sup>30</sup> *Id.* (first citing 8 U.S.C. §§ 1183a(a)(1)(B)–(C), (e); then citing 8 C.F.R. § 213a.2(d); and then citing *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 332 (2015)).

<sup>31</sup> *See Belevich*, 2021 U.S. App. LEXIS 32501, at \*6 (citing 8 U.S.C. § 1183a(c)).

law and not state law should be used to “defin[e] the scope of a sponsor’s obligation to provide financial support.”<sup>32</sup>

Turning to the sponsors’ arguments on appeal, the court first analyzed the plain language of the relevant statute.<sup>33</sup> The text of the statute gives two specific events that terminate a sponsor’s obligation.<sup>34</sup> First, the statute provides that “[a]n affidavit of support shall be enforceable with respect to benefits provided for an alien before the date the alien is naturalized as a citizen of the United States, or, if earlier, the termination date provided under paragraph (3).”<sup>35</sup> Second, this referenced paragraph goes on to state that “the obligation ends after the immigrant has worked for forty quarters.”<sup>36</sup>

After analyzing the plain language of the statute, the court then turned to the plain language of the applicable regulations and affidavit.<sup>37</sup> The court noted that the applicable regulation provides additional events that may terminate a sponsor’s support obligation.<sup>38</sup> Like the statute, the regulation states that a sponsor’s obligation may terminate if “the sponsored immigrant becomes a U.S. citizen [or] works forty qualifying quarters.”<sup>39</sup> The regulation further provides that the sponsor’s obligation may terminate if the sponsored immigrant “ceases to hold permanent resident status and departs the United States, obtains a grant of adjustment of status as relief from removal, or dies[,]” or if the sponsor dies.<sup>40</sup> Here, the court found that the Form I-864 affidavit that the sponsors executed reiterated these exact terminating events and additionally provided “that divorce is not a terminating event.”<sup>41</sup>

Although the asserted equitable defenses do not align with any of the explicit terminating events, the sponsors argued their obligation should have ended because the acts committed by Belevich “undermined his relationship with his family.”<sup>42</sup> However, the court rejected this argument, noting the terminating events expressly listed in “the statute, regulation, and affidavit

---

<sup>32</sup> *Id.*

<sup>33</sup> *See id.*

<sup>34</sup> *Id.* at \*6–7.

<sup>35</sup> *Id.* (alteration in original) (citing 8 U.S.C. § 1183a(a)(2)).

<sup>36</sup> *Id.* at \*7 (citing 8 U.S.C. § 1183a(a)(3)(A)).

<sup>37</sup> *See Belevich*, 2021 U.S. App. LEXIS 32501, at \*7.

<sup>38</sup> *See id.*

<sup>39</sup> *Id.* (citing 8 C.F.R. § 213a.2(e)(2)(i)).

<sup>40</sup> *Id.* (citing 8 C.F.R. §§ 213a.2(e)(2)(i)–(ii)); *see also id.* (quoting 8 C.F.R. § 213a.2(f) (“[O]nce the intending immigrant has obtained an immigrant visa, a sponsor . . . cannot disavow his or her agreement to act as a sponsor’ unless the immigrant withdraws the visa petition.”)).

<sup>41</sup> *Id.* at \*7.

<sup>42</sup> *Belevich*, 2021 U.S. App. LEXIS 32501, at \*7–8.

concern [Belevich's] financial position and status in the country, not his relationship with his family.”<sup>43</sup>

Alternatively, the sponsors argued that because “the statute, regulation, and affidavit are merely silent about equitable reasons to terminate the obligation” then the court may infer the defenses.<sup>44</sup> The court rejected this argument for two reasons.<sup>45</sup>

First, the court explained that “the text is best read to identify an exclusive list of terminating events.”<sup>46</sup> Specifically, the court pointed to the “strong language” of the statute that states that the affidavit “shall be enforceable . . . before” a specified terminating event<sup>47</sup> and the regulatory language that provides “a sponsor ‘cannot disavow’ the agreement unless the sponsored immigrant withdraws his petition for a visa.”<sup>48</sup> Furthermore, the court reasoned that the list of terminating events is introduced in the statute with the word “before” and in the regulation with the word “when,” which “suggests that the obligation remains *until* one of the listed events occurs.”<sup>49</sup> Accordingly, the court reasoned that terminating events not specifically mentioned “were excluded by deliberate choice, not inadvertence,”<sup>50</sup> and concluded that it “cannot create equitable *defenses* to a statutory cause of action when the text forecloses them.”<sup>51</sup>

Second, the court rejected the sponsors’ argument because even if the statute was silent on equitable defenses, such defenses “contravene the express purpose of the statute.”<sup>52</sup> As the court explained, the express purpose of the statute “is to prevent admission to the United States of any immigrant who ‘is likely at any time to become a public charge.’”<sup>53</sup> However, the court noted that the equitable defenses asserted by the sponsors are not concerned with whether an immigrant may become a public charge—rather, “[t]he defenses of unclean hands, anticipatory breach, and equitable estoppel

---

<sup>43</sup> *Id.* at \*8.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at \*8, \*10.

<sup>46</sup> *Id.* at \*8.

<sup>47</sup> *Id.* at \*8–9 (emphasis added) (quoting 8 U.S.C. § 1183a(a)(2)).

<sup>48</sup> *Belevich*, 2021 U.S. App. LEXIS 32501, at \*8 (emphasis added) (quoting 8 C.F.R. § 213a.2(f)).

<sup>49</sup> *Id.* at \*9.

<sup>50</sup> *Id.* (quoting *United States v. Curbelo*, 726 F.3d 1260, 1277 (11th Cir. 2013)).

<sup>51</sup> *Id.* at \*10 (citing *Indus. Risk Insurers v. M.A.N. Gutehoffnugshutte GmbH*, 141 F.3d 1434, 1445–46 (11th Cir. 1998)).

<sup>52</sup> *Id.* (citing *Erler*, 824 F.3d at 1179).

<sup>53</sup> *Belevich*, 2021 U.S. App. LEXIS 32501, at \*11 (citing 8 U.S.C. § 1182(a)(4)(A)); *see also id.* (citing 8 C.F.R. § 213a.2(e)(2)(i)) (“The enumerated terminating events conform to this purpose: An immigrant is unlikely to become a public charge if he maintains stable employment, leaves the country, becomes supported by someone else, or dies.”).

concern the immigrant's wrongful acts."<sup>54</sup> Therefore, the court held even if the statute was silent on the matter, the sponsors could not rely on these equitable defenses to release them of their financial obligation to Belevich because these "equitable defenses are inconsistent with the purposes of the statute."<sup>55</sup>

Although it recognized the "heavy burden" its decision imposed on the sponsors in light of Belevich's criminal charges, the Eleventh Circuit affirmed the district court's ruling, holding that the court "may not create defenses that the statute, regulation, and affidavit foreclose."<sup>56</sup> As a matter of first impression, the court's decision in *Belevich* is significant as it will likely impact a potential sponsor's willingness to execute Form I-864 affidavits for their immigrant family members to obtain visas. Those who could sponsor immigrants will likely be more hesitant to execute these affidavits of support because based on the Eleventh Circuit's *Belevich* decision, sponsors may still be on the hook to provide financial support so long as one of the specified terminating events is not met—even if the immigrant is criminally convicted for acts committed directly against the sponsor or their family.

---

<sup>54</sup> *Id.* at \*11.

<sup>55</sup> *Id.* at \*12 (citing *Louisville & Nashville R.R. Co. v. Maxwell*, 237 U.S. 94, 97 (1915)).

<sup>56</sup> *Id.*