

PART 213a—AFFIDAVITS OF SUPPORT ON BEHALF OF IMMIGRANTS

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AUTHORITY: 8 U.S.C. 1183a; 8 CFR part 2.

SOURCE: 62 FR 54352, Oct. 20, 1997, unless otherwise noted.

§ 213a.1 Definitions.

As used in this part, the term:

Domicile means the place where a sponsor has his or her principal residence, as defined in section 101(a)(33) of the Act, with the intention to maintain that residence for the foreseeable future.

Federal poverty line means the level of income equal to the poverty guidelines as issued by the Secretary of Health and Human Services in accordance with 42 U.S.C. 9902 that is applicable to a household of the size involved. For purposes of considering the Form I-864, Affidavit of Support Under Section 213A of the Act, the Service and Consular Posts will use the most recent income-poverty guidelines published in the FEDERAL REGISTER by the Department of Health and Human Services. These guidelines are updated annually, and the Service and Consular Posts will begin to use updated guidelines on the first day of the second month after the date the guidelines are published in the FEDERAL REGISTER.

Household income means the income used to determine whether the sponsor meets the minimum income requirements under sections 213A(f)(1)(E), 213A(f)(3), or 213A(f)(5) of the Act. It includes the income of the sponsor, and of the sponsor's spouse and any other person included in determining the sponsor's household size, if the spouse or other person is at least 18 years old and has signed a U.S. Citizenship and Immigration Services (USCIS) Form I-864A, Affidavit of Support Contract Between Sponsor and Household Member, on behalf of the sponsor and intending immigrants. The "household income"

may not, however, include the income of an intending immigrant, unless the intending immigrant is either the sponsor's spouse or has the same principal residence as the sponsor and the preponderance of the evidence shows that the intending immigrant's income results from the intending immigrant's lawful employment in the United States or from some other lawful source that will continue to be available to the intending immigrant after he or she acquires permanent resident status. The prospect of employment in the United States that has not yet actually begun will not be sufficient to meet this requirement.

Household size means the number obtained by adding the number of persons specified in this definition. In calculating household size, no individual shall be counted more than once. If the intending immigrant's spouse or child is a citizen or already holds the status of an alien lawfully admitted for permanent residence, then the sponsor should not include that spouse or child in determining the total household size, unless the intending immigrant's spouse or child is a dependent of the sponsor.

(1) In all cases, the household size includes the sponsor, the sponsor's spouse and all of the sponsor's children, as defined in section 101(b)(1) of the Act (other than a stepchild who meets the requirements of section 101(b)(1)(B) of the Act, if the stepchild does not reside with the sponsor, is not claimed by the sponsor as a dependent for tax purposes, and is not seeking to immigrate based on the stepparent/stepchild relationship), unless these children have reached the age of majority under the law of the place of domicile and the sponsor did not claim them as dependents on the sponsor's Federal income tax return for the most recent tax year. The following persons must also be included in calculating the sponsor's household size: Any other persons (whether related to the sponsor or not) whom the sponsor has claimed as dependents on the sponsor's Federal income tax return for the most recent tax year, even if such persons do not have the same principal residence as the sponsor, plus the number of aliens the sponsor has sponsored under any

other Forms I-864 for whom the sponsor's support obligation has not terminated, plus the number of aliens to be sponsored under the current Form I-864, even if such aliens do not or will not have the same principal residence as the sponsor. If a child, as defined in section 101(b)(1) of the Act, or spouse of the principal intending immigrant is an alien who does not currently reside in the United States and who either is not seeking to immigrate at the same time as, or will not seek to immigrate within six months of the principal intending immigrant's immigration, the sponsor may exclude that child or spouse in calculating the sponsor's household size.

(2) If the sponsor chooses to do so, the sponsor may add to the number of persons specified in the first part of this definition the number of relatives (as defined in this section) of the sponsor who have the same principal residence as the sponsor and whose income will be relied on to meet the requirements of section 213A of the Act and this part.

Immigration Officer, solely for purposes of this part, includes a Consular Officer, as defined by section 101(a)(9) of the Act, as well as an Immigration Officer, as defined by §103.1(j) of this chapter.

Income means an individual's total income (adjusted gross income for those who file IRS Form 1040EZ) for purposes of the individual's U.S. Federal income tax liability, including a joint income tax return (e.g., line 22 on the 2004 IRS Form 1040, line 15 on the 2004 IRS Form 1040A, or line 4 on the 2004 IRS Form 1040EZ or the corresponding line on any future revision of these IRS Forms). Only an individual's Federal income tax return—that is, neither a state or territorial income tax return nor an income tax return filed with a foreign government—shall be filed with an affidavit of support, unless the individual had no duty to file a Federal income tax return, and claims that his or her state, territorial or foreign taxable income is sufficient to establish the sufficiency of the affidavit of support.

Intending immigrant means any beneficiary of an immigrant visa petition filed under section 204 of the Act, in-

cluding any alien who will accompany or follow-to-join the principal beneficiary.

Joint sponsor means any individual who meets the requirements of section 213A(f)(1)(A), (B), (C), and (E) of the Act and 8 CFR 213a.2(c)(1)(i), and who, as permitted by section 213A(f)(5)(A) of the Act, is willing to submit a Form I-864 and accept joint and several liability with the sponsor or substitute sponsor, in any case in which the sponsor's or substitute sponsor's household income is not sufficient to satisfy the requirements of section 213A of the Act.

Means-tested public benefit means either a Federal means-tested public benefit, which is any public benefit funded in whole or in part by funds provided by the Federal Government that the Federal agency administering the Federal funds has determined to be a Federal means-tested public benefit under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, or a State means-tested public benefit, which is any public benefit for which no Federal funds are provided that a State, State agency, or political subdivision of a State has determined to be a means-tested public benefit. No benefit shall be considered to be a means-tested public benefit if it is a benefit described in sections 401(b), 411(b), 422(b) or 423(d) of Public Law 104-193.

Program official means the officer or employee of any Federal, State, or local government agency or of any private agency that administers any means-tested public benefit program who has authority to act on the agency's behalf in seeking reimbursement of means-tested public benefits.

Relative means a husband, wife, father, mother, child, adult son, adult daughter, brother, or sister.

Significant ownership interest means an ownership interest of 5 percent or more in a for-profit entity that filed an immigrant visa petition to accord a prospective employee an immigrant status under section 203(b) of the Act.

Sponsor means an individual who is either required to execute or has executed a Form I-864 under this part.

Sponsored immigrant means any alien who was an intending immigrant, once that person has been lawfully admitted

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for permanent residence, so that the affidavit of support filed for that person under this part has entered into force.

Substitute sponsor means an individual who meets the requirements of section 213A(f)(1)(A), (B), (C), and (E) of the Act and 8 CFR 213a.2(c)(1)(i), who is related to the principal intending immigrant in one of the ways described in section 213A(f)(5)(B) of the Act, and who is willing to sign a Form I-864 in place of the now-deceased person who filed the Form I-130 or Form I-129F that provides the basis for the intending immigrant's ability to seek permanent residence.

[62 FR 54352, Oct. 20, 1997, as amended at 71 FR 35749, June 21, 2006]

§ 213a.2 Use of affidavit of support.

(a) *General.* (1)(i)(A) In any case specified in paragraph (a)(2) of this section, an intending immigrant is inadmissible as an alien likely to become a public charge, unless the qualified sponsor specified in paragraph (b) of this section or a substitute sponsor and, if necessary, a joint sponsor, has executed on behalf of the intending immigrant a Form I-864, Affidavit of Support Under Section 213A of the Act, in accordance with section 213A of the Act, this section, and the instructions on Form I-864. The sponsor may use the Form I-864EZ, EZ Affidavit of Support Under Section 213A of the Act, rather than the Form I-864, if the sponsor meets the eligibility requirements on the instructions for the Form I-864EZ. Each reference in this section to Form I-864 is deemed to be a reference to Form I-864EZ for any case in which the sponsor is eligible to use the Form I-864EZ.

(B) If the intending immigrant claims that, under paragraph (a)(2)(ii)(A), (C), or (E) of this section, the intending immigrant is exempt from the requirement to file a Form I-864, the intending immigrant must include with his or her application for an immigrant visa or adjustment of status a properly completed Form I-864W, Intending Immigrant's I-864 Exemption.

(ii) An affidavit of support is executed when a sponsor signs a Form I-864 and that Form I-864 is submitted, together with the current edition of Form I-864P and the initial evidence required by this section, in accordance

with this paragraph. The current edition Form I-864P is available on the Internet at <http://www.uscis.gov/graphics/formsfee/forms>. Those without Internet access may call (800) 870-3676 to obtain the Form I-864P.

(A) If the intending immigrant is applying for an immigrant visa, the intending immigrant must submit the Form I-864 (and any Forms I-864A) to the Department of State officer with jurisdiction over the intending immigrant's application for an immigrant visa, in accordance with instructions from the Department of State officer or the National Visa Center;

(B) If the intending immigrant is applying for adjustment of status, the intending immigrant must submit the Form I-864 (and any Forms I-864A) with the application for adjustment of status.

(iii) There must be a separate Form I-864 (and any Form(s) I-864A), with original signatures, for each principal visa petition beneficiary.

(iv) Each immigrant who will accompany the principal intending immigrant must be included on Form I-864 (and any Forms I-864A). See paragraph (f) of this section for further information concerning immigrants who intend to accompany or follow the principal intending immigrant to the United States.

(v)(A) Except as provided for under paragraph (a)(1)(v)(B) of this section, the Department of State officer, immigration officer, or immigration judge shall determine the sufficiency of a Form I-864 or I-864A based on the sponsor's, substitute sponsor's, or joint sponsor's reasonably expected household income in the year in which the intending immigrant filed the application for an immigrant visa or for adjustment of status, and based on the evidence submitted with the Form I-864 or Form I-864A and the Poverty Guidelines in effect when the intending immigrant filed the application for an immigrant visa or adjustment of status.

(B) If more than one year passes between the filing of the Form I-864 or Form I-864A and the hearing, interview, or examination of the intending immigrant concerning the intending

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immigrant's application for an immigrant visa or adjustment of status, and the Department of State officer, immigration officer or immigration judge determines, in the exercise of discretion, that the particular facts of the case make the submission of additional evidence necessary to the proper adjudication of the case, then the Department of State officer, immigration officer or immigration judge may direct the intending immigrant to submit additional evidence. A Department of State officer or immigration judge shall make the request in writing, and provide the intending immigrant not less than 30 days to submit the additional evidence. An immigration judge may direct the intending immigrant to submit additional evidence and also set the deadline for submission of the initial evidence in any manner permitted under subpart C of 8 CFR part 1003 and any local rules of the Immigration Court. If additional evidence is required under this paragraph, an intending immigrant must submit additional evidence (including copies or transcripts of any income tax returns for the most recent tax year) concerning the income or employment of the sponsor, substitute sponsor, joint sponsor, or household member in the year in which the Department of State officer, immigration officer, or immigration judge makes the request for additional evidence. In this case, the sufficiency of the Form I-864 and any Form I-864A will be determined based on the sponsor's, substitute sponsor's, or joint sponsor's reasonably expected household income in the year the Department of State officer, immigration officer or immigration judge makes the request for additional evidence, and based on the evidence submitted in response to the request for additional evidence and on the Poverty Guidelines in effect when the request for evidence was issued.

(2)(i) Except for cases specified in paragraph (a)(2)(ii) of this section, paragraph (a)(1) of this section applies to any application for an immigrant visa or for adjustment of status filed on or after December 19, 1997, in which an intending immigrant seeks an immigrant visa, admission as an immigrant, or adjustment of status as:

(A) An immediate relative under section 201(b)(2)(A)(i) of the Act, including orphans and any alien admitted as a K nonimmigrant when the alien seeks adjustment of status;

(B) A family-based immigrant under section 203(a) of the Act; or

(C) An employment-based immigrant under section 203(b) of the Act, if a relative (as defined in 8 CFR 213a.1) of the intending immigrant is a citizen or an alien lawfully admitted for permanent residence who either filed the employment-based immigrant petition or has a significant ownership interest in the entity that filed the immigrant visa petition on behalf of the intending immigrant. An affidavit of support under this section is not required, however, if the relative is a brother or sister of the intending immigrant, unless the brother or sister is a citizen.

(ii) Paragraph (a)(1) of this section shall not apply if the intending immigrant:

(A) Filed a visa petition on his or her own behalf pursuant to section 204(a)(1)(A)(ii), (iii), or (iv) or section 204(a)(1)(B)(ii) or (iii) of the Act, or who seeks to accompany or follow-to-join an immigrant who filed a visa petition on his or his own behalf pursuant to section 204(a)(1)(A)(ii), (iii), or (iv) or section 204(a)(1)(B)(ii) or (iii) of the Act;

(B) Seeks admission as an immigrant on or after December 19, 1997, in a category specified in paragraph (a)(2)(i) of this section with an immigrant visa issued on the basis of an immigrant visa application filed with the Department of State officer before December 19, 1997;

(C) Establishes, on the basis of the alien's own Social Security Administration record or those of his or her spouse or parent(s), that he or she has already worked, or under section 213A(a)(3)(B) of the Act, can already be credited with, 40 qualifying quarters of coverage as defined under title II of the Social Security Act, 42 U.S.C. 401, *et seq.*;

(D) Is a child admitted under section 211(a) of the Act and 8 CFR 211.1(b)(1); or

(E) Is the child of a citizen, if the child is not likely to become a public

charge (other than because of the provision of section 212(a)(4)(C) of the Act), and the child's lawful admission for permanent residence will result automatically in the child's acquisition of citizenship under section 320 of the Act, as amended. This exception applies to an alien orphan if the citizen parent(s) has (or have) legally adopted the alien orphan before the alien orphan's acquisition of permanent residence, and if both adoptive parents personally saw and observed the alien orphan before or during the foreign adoption proceeding. An affidavit of support under this part is still required if the citizen parent(s) will adopt the alien orphan in the United States only after the alien orphan's acquisition of permanent residence. If the citizen parent(s) adopted the alien orphan abroad, but at least one of the adoptive parents did not see and observe the alien orphan before or during the foreign adoption proceeding, then an affidavit of support under this part is still required, unless the citizen parent establishes that, under the law of the State of the alien orphan's intended residence in the United States, the foreign adoption decree is entitled to recognition without the need for a formal administrative or judicial proceeding in the State of proposed residence. In the case of a child who immigrates as a Convention adoptee, as defined in 8 CFR 204.301, this exception applies if the child was adopted by the petitioner in the Convention country. An affidavit of support under this part is still required in the case of a child who immigrates as a Convention adoptee if the petitioner will adopt the child in the United States only after the child's acquisition of permanent residence.

(b) *Affidavit of support sponsors.* The following individuals must execute Form I-864 on behalf of the intending immigrant in order for the intending immigrant to be found admissible on public charge grounds:

(1) *For immediate relatives and family-based immigrants.* The person who filed the Form I-130 or Form I-600 immigrant visa petition (or the Form I-129F petition, for a K nonimmigrant seeking adjustment), the approval of which forms the basis of the intending immigrant's eligibility to apply for an im-

migrant visa or adjustment of status as an immediate relative or a family-based immigrant, must execute a Form I-864 on behalf of the intending immigrant. If the intending immigrant is the beneficiary of more than one approved immigrant visa petition, it is the person who filed the petition that is actually the basis for the intending immigrant's eligibility to apply for an immigrant visa or adjustment of status who must file the Form I-864.

(2) *For employment-based immigrants.* A relative of an intending immigrant seeking an immigrant visa under section 203(b) of the Act must file a Form I-864 if the relative either filed the immigrant visa petition on behalf of the intending immigrant or owns a significant ownership interest in an entity that filed an immigrant visa petition on behalf of the intending immigrant, but only if the relative is a citizen or an alien lawfully admitted for permanent residence. If the intending immigrant is the beneficiary of more than one relative's employment-based immigrant visa petition, it is the relative who filed the petition that is actually the basis for the intending immigrant's eligibility to apply for an immigrant visa or adjustment of status who must file the Form I-864.

(c) *Sponsorship requirements.* (1)(i) *General.* A sponsor must be:

(A) At least 18 years of age;

(B) Domiciled in the United States or any territory or possession of the United States; and

(C)(I) A citizen or an alien lawfully admitted for permanent residence in the case described in paragraph (a)(2)(i) of this section; or

(2) A citizen or national or an alien lawfully admitted for permanent residence if the individual is a substitute sponsor or joint sponsor.

(ii) *Determination of domicile.* (A) If the sponsor is residing abroad, but only temporarily, the sponsor bears the burden of proving, by a preponderance of the evidence, that the sponsor's domicile (as that term is defined in 8 CFR 213a.1) remains in the United States, *provided*, that a permanent resident who is living abroad temporarily is considered to be domiciled in the United States if the permanent resident has applied for and obtained the

preservation of residence benefit under section 316(b) or section 317 of the Act, *and provided further*, that a citizen who is living abroad temporarily is considered to be domiciled in the United States if the citizen's employment abroad meets the requirements of section 319(b)(1) of the Act.

(B) If the sponsor is not domiciled in the United States, the sponsor can still sign and submit a Form I-864 so long as the sponsor satisfies the Department of State officer, immigration officer, or immigration judge, by a preponderance of the evidence, that the sponsor will establish a domicile in the United States on or before the date of the principal intending immigrant's admission or adjustment of status. The intending immigrant will be inadmissible under section 212(a)(4) of the Act, and the immigration officer or immigration judge must deny the intending immigrant's application for admission or adjustment of status, if the sponsor has not, in fact, established a domicile in the United States on or before the date of the decision on the principal intending immigrant's application for admission or adjustment of status. In the case of a sponsor who comes to the United States intending to establish his or her principal residence in the United States at the same time as the principal intending immigrant's arrival and application for admission at a port-of-entry, the sponsor shall be deemed to have established a domicile in the United States for purposes of this paragraph, unless the sponsor is also a permanent resident alien and the sponsor's own application for admission is denied and the sponsor leaves the United States under a removal order or as a result of the sponsor's withdrawal of the application for admission.

(2) *Demonstration of ability to support intending immigrants.* In order for the intending immigrant to overcome the public charge ground of inadmissibility, the sponsor must demonstrate the means to maintain the intending immigrant at an annual income of at least 125 percent of the Federal poverty line. If the sponsor is on active duty in the Armed Forces of the United States (other than active duty for training) and the intending immigrant is the

sponsor's spouse or child, the sponsor's ability to maintain income must equal at least 100 percent of the Federal poverty line.

(i) *Proof of income.* (A) The sponsor must include with the Form I-864 either a photocopy or an Internal Revenue Service-issued transcript of his or her complete Federal income tax return for the most recent taxable year (counting from the date of the signing, rather than the filing, of the Form I-864). However, the sponsor may, at his or her option, submit tax returns for the three most recent years if the sponsor believes that these additional tax returns may help in establishing the sponsor's ability to maintain his or her income at the applicable threshold set forth in Form I-864P, Poverty Guidelines. Along with each transcript or photocopy, the sponsor must also submit as initial evidence copies of all schedules filed with each return and (if the sponsor submits a photocopy, rather than an IRS transcript of the tax return(s)) all Forms W-2 (if the sponsor relies on income from employment) and Forms 1099 (if the sponsor relies on income from sources documented on Forms 1099) in meeting the income threshold. The sponsor may also include as initial evidence: Letter(s) evidencing his or her current employment and income, paycheck stub(s) (showing earnings for the most recent six months, financial statements, or other evidence of the sponsor's anticipated household income for the year in which the intending immigrant files the application for an immigrant visa or adjustment of status. By executing Form I-864, the sponsor certifies under penalty of perjury under United States law that the evidence of his or her current household income is true and correct and that each transcript or photocopy of each income tax return is a true and correct transcript or photocopy of the return that the sponsor filed with the Internal Revenue Service for that taxable year.

(B) If the sponsor had no legal duty to file a Federal income tax return for the most recent tax year, the sponsor must explain why he or she had no legal duty to file a Federal income tax return for that year. If the sponsor claims he or she had no legal duty to

file for any reason other than the level of the sponsor's income for that year, the initial evidence submitted with the Form I-864 must also include any evidence of the amount and source of the income that the sponsor claims was exempt from taxation and a copy of the provisions of any statute, treaty, or regulation that supports the claim that he or she had no duty to file an income tax return with respect to that income. If the sponsor had no legal obligation to file a Federal income tax return, he or she may submit other evidence of annual income. The fact that a sponsor had no duty to file a Federal income tax return does not relieve the sponsor of the duty to file Form I-864.

(C)(1) The sponsor's ability to meet the income requirement will be determined based on the sponsor's household income. In establishing the household income, the sponsor may rely entirely on his or her personal income, if it is sufficient to meet the income requirement. The sponsor may also rely on the income of the sponsor's spouse and of any other person included in determining the sponsor's household size, if the spouse or other person is at least 18 years old and has completed and signed a Form I-864A. A person does not need to be a U.S. citizen, national, or alien lawfully admitted for permanent residence in order to sign a Form I-864A.

(2) Each individual who signs Form I-864A agrees, in consideration of the sponsor's signing of the Form I-864, to provide to the sponsor as much financial assistance as may be necessary to enable the sponsor to maintain the intending immigrants at the annual income level required by section 213A(a)(1)(A) of the Act, to be jointly and severally liable for any reimbursement obligation that the sponsor may incur, and to submit to the personal jurisdiction of any court that has subject matter jurisdiction over a civil suit to enforce the contract or the affidavit of support. The sponsor, as a party to the contract, may bring suit to enforce the contract. The intending immigrants and any Federal, state, or local agency or private entity that provides a means-tested public benefit to an intending immigrant are third party beneficiaries of the contract between the sponsor and the other individual or

individuals on whose income the sponsor relies and may bring an action to enforce the contract in the same manner as third party beneficiaries of other contracts.

(3) If there is no spouse or child immigrating with the intending immigrant, then there will be no need for the intending immigrant to sign a Form I-864A, even if the sponsor will rely on the continuing income of the intending immigrant to meet the income requirement. If, however, the sponsor seeks to rely on an intending immigrant's continuing income to establish the sponsor's ability to support the intending immigrant's spouse or children, then the intending immigrant whose income is to be relied on must sign the Form I-864A.

(4) If the sponsor relies on the income of any individual who has signed Form I-864A, the sponsor must also include with the Form I-864 and Form I-864A, with respect to the person who signed the Form I-864A, the initial evidence required under paragraph (c)(2)(i)(A) of this section. The household member's tax return(s) must be for the same tax year as the sponsor's tax return(s). An individual who signs Form I-864A certifies, under penalty of perjury, that the submitted transcript or photocopy of the tax return is a true and correct transcript or photocopy of the Federal income tax return filed with the Internal Revenue Service, and that the information concerning that person's employment and income is true and correct.

(5) If the person who signs the Form I-864A is not an intending immigrant, and is any person other than the sponsor's spouse or a claimed dependent of the sponsor, the sponsor must also attach proof that the person is a relative (as defined in 8 CFR 213a.1) of the sponsor and that the Form I-864A signer has the same principal residence as the sponsor. If an intending immigrant signs a Form I-864A, the sponsor must also provide proof that the sponsored immigrant has the same principal residence as the sponsor, unless the sponsored immigrant is the sponsor's spouse.

(D) *Effect of failure to file income tax returns.* If a sponsor, substitute sponsor, joint sponsor, or household member did not file a Federal income tax return for the year for which a transcript or photocopy must be provided, the Form I-864 or Form I-864A will not be considered sufficient to satisfy the requirements of section 213A of the Act, even if the household income meets the requirements of section 213A of the Act, unless the sponsor, substitute sponsor, joint sponsor, or household member proves, by a preponderance of the evidence, that he or she had no duty to file. If the sponsor, substitute sponsor, joint sponsor or household member cannot prove that he or she had no duty to file, then the Form I-864 or Form I-864A will not be considered sufficient to satisfy the requirements of section 213A of the Act until the sponsor, substitute sponsor, joint sponsor, or household member proves that he or she has satisfied the obligation to file the tax return and provides a transcript or copy of the return.

(ii) *Determining the sufficiency of an affidavit of support.* The sufficiency of an affidavit of support shall be determined in accordance with this paragraph.

(A) *Income.* The sponsor must first calculate the total income attributable to the sponsor under paragraph (c)(2)(i)(C) of this section for the year in which the intending immigrant filed the application for an immigrant visa or adjustment of status.

(B) *Number of persons to be supported.* The sponsor must then determine his or her household size as defined in 8 CFR 213a.1.

(C) *Sufficiency of income.* Except as provided in this paragraph, or in paragraph (a)(1)(v)(B) of this section, the sponsor's affidavit of support shall be considered sufficient to satisfy the requirements of section 213A of the Act and this section if the reasonably expected household income for the year in which the intending immigrant filed the application for an immigrant visa or adjustment of status, calculated under paragraph (c)(2)(iii)(A) of this section, would equal at least 125 percent of the Federal poverty line for the sponsor's household size as defined in 8 CFR 213a.1, under the Poverty Guide-

lines in effect when the intending immigrant filed the application for an immigrant visa or for adjustment of status, except that the sponsor's income need only equal at least 100 percent of the Federal poverty line for the sponsor's household size, if the sponsor is on active duty (other than for training) in the Armed Forces of the United States and the intending immigrant is the sponsor's spouse or child. The sponsor's household income for the year in which the intending immigrant filed the application for an immigrant visa or adjustment of status shall be given the greatest evidentiary weight; any tax return and other information relating to the sponsor's financial history will serve as evidence tending to show whether the sponsor is likely to be able to maintain his or her income in the future. If the projected household income for the year in which the intending immigrant filed the application for an immigrant visa or adjustment of status meets the applicable income threshold, the affidavit of support may be held to be insufficient on the basis of the household income but only if, on the basis of specific facts, including a material change in employment or income history of the sponsor, substitute sponsor, joint sponsor or household member, the number of aliens included in Forms I-864 that the sponsor has signed but that have not yet entered into force in accordance with paragraph (e) of this section, or other relevant facts, it is reasonable to infer that the sponsor will not be able to maintain his or her household income at a level sufficient to meet his or her support obligations.

(iii) *Inability to meet income requirement.* (A) If the sponsor is unable to meet the minimum income requirement in paragraph (c)(2)(iii) of this section, the intending immigrant is inadmissible under section 212(a)(4) of the Act unless:

(1) The sponsor, the intending immigrant or both, can meet the significant assets provision of paragraph (c)(2)(iv)(B) of this section; or

(2) A joint sponsor executes a separate Form I-864.

(B) *Significant assets.* The sponsor may submit evidence of the sponsor's ownership of significant assets, such as

savings accounts, stocks, bonds, certificates of deposit, real estate, or other assets. An intending immigrant may submit evidence of the intending immigrant's assets as a part of the affidavit of support, even if the intending immigrant is not required to sign a Form I-864A. The assets of any person who has signed a Form I-864A may also be considered in determining whether the assets are sufficient to meet this requirement. To qualify as "significant assets" the combined cash value of all the assets (the total value of the assets less any offsetting liabilities) must exceed:

(1) If the intending immigrant is the spouse or child of a United States citizen (and the child has reached his or her 18th birthday), three times the difference between the sponsor's household income and the Federal poverty line for the sponsor's household size (including all immigrants sponsored in any affidavit of support in force or submitted under this section);

(2) If the intending immigrant is an alien orphan who will be adopted in the United States after the alien orphan acquires permanent residence (or in whose case the parents will need to seek a formal recognition of a foreign adoption under the law of the State of the intending immigrant's proposed residence because at least one of the parents did not see the child before or during the adoption), and who will, as a result of the adoption or formal recognition of the foreign adoption, acquire citizenship under section 320 of the Act, the difference between the sponsor's household income and the Federal poverty line for the sponsor's household size (including all immigrants sponsored in any affidavit of support in force or submitted under this section);

(3) In all other cases, five times the difference between the sponsor's household income and the Federal poverty line for the sponsor's household size (including all immigrants sponsored in any affidavit of support in force or submitted under this section).

(C) *Joint sponsor.* A joint sponsor must execute a separate Form I-864 on behalf of the intending immigrant(s) and be willing to accept joint and several liability with the sponsor or sub-

stitute sponsor. A joint sponsor must meet all the eligibility requirements under paragraph (c)(1) of this section, except that the joint sponsor does not have to have filed a visa petition on behalf of the intending immigrant. The joint sponsor must demonstrate his or her ability to support the intending immigrant in the manner specified in paragraph (c)(2) of this section. A joint sponsor's household income must meet or exceed the income requirement in paragraph (c)(2)(iii) of this section unless the joint sponsor can demonstrate significant assets as provided in paragraph (c)(2)(iv)(A) of this section. The joint sponsor's household income must equal at least 125% of the Poverty Guidelines for the joint sponsor's household size, unless the joint sponsor is on active duty in the Armed Forces and the intending immigrant is the joint sponsor's spouse or child, in which case the joint sponsor's household income is sufficient if it equals at least 100% of the Poverty Guidelines for the joint sponsor's household size. An intending immigrant may not have more than one joint sponsor, but, if the joint sponsor's household income is not sufficient to meet the income requirement with respect to the principal intending immigrant, any spouse and all the children who, under section 203(d) of the Act, seek to accompany the principal intending immigrant, then the joint sponsor may specify on the Form I-864 that the Form I-864 is submitted only on behalf of the principal intending immigrant and those accompanying family members specifically listed on the Form I-864. The remaining accompanying family members will then be inadmissible under section 212(a)(4) of the Act unless a second joint sponsor submits a Form I-864 on behalf of all the remaining family members who seek to accompany the principal intending immigrant and who are not included in the first joint sponsor's Form I-864. There may not be more than two joint sponsors for the family group consisting of the principal intending immigrant and the accompanying spouse and children who will accompany the principal intending immigrant.

(D) *Substitute sponsor.* In a family-sponsored case, if the visa petitioner

dies after approval of the visa petition, but the U.S. Citizenship and Immigration Services determines, under 8 CFR 205.1(a)(3)(i)(C), that for humanitarian reasons it would not be appropriate to revoke approval of the visa petition, then a substitute sponsor, as defined in 8 CFR 213a.1, may sign the Form I-864. The substitute sponsor must meet all the requirements of this section that would have applied to the visa petitioner, had the visa petitioner survived and been the sponsor. The substitute sponsor's household income must equal at least 125% of the Poverty Guidelines for the substitute sponsor's household size, unless the intending immigrant is the substitute sponsor's spouse or child and the substitute sponsor is on active duty in the Armed Forces (other than active duty for training), in which case the substitute sponsor's household income is sufficient if it equals at least 100% of the Poverty Guidelines for the substitute sponsor's household size. If the substitute sponsor's household income is not sufficient to meet the requirements of section 213A(a)(f)(1)(E) of the Act and paragraph (c)(2) of this section, the alien will be inadmissible unless a joint sponsor signs a Form I-864.

(iv) *Remaining inadmissibility on public charge grounds.* Notwithstanding the filing of a sufficient affidavit of support under section 213A of the Act and this section, an alien may be found to be inadmissible under section 212(a)(4) of the Act if the alien's case includes evidence of specific facts that, when considered in light of section 212(a)(4)(B) of the Act, support a reasonable inference that the alien is likely at any time to become a public charge.

(v) *Verification of employment, income, and assets.* The Federal Government may pursue verification of any information provided on or with Form I-864, including information on employment, income, or assets, with the employer, financial or other institutions, the Internal Revenue Service, or the Social Security Administration. To facilitate this verification process, the sponsor, joint sponsor, substitute sponsor, or household member must sign and submit any necessary waiver form when directed to do so by the immigration officer, immigration judge, or Depart-

ment of State officer who has jurisdiction to adjudicate the case to which the Form I-864 or I-864A relates. A sponsor's, substitute sponsor's, joint sponsor's, or household member's failure or refusal to sign any waiver needed to verify the information when directed to do so constitutes a withdrawal of the Form I-864 or I-864A, so that, in adjudicating the intending immigrant's application for an immigrant visa or adjustment of status, the Form I-864 or Form I-864A will be deemed not to have been filed.

(vi) *Effect of fraud or material concealment or misrepresentation.* A Form I-864 or Form I-864A is insufficient to satisfy the requirements of section 213A of the Act and this part, and the affidavit of support shall be found insufficient to establish that the intending immigrant is not likely to become a public charge, if the Department of State officer, immigration officer or immigration judge finds that Form I-864 or Form I-864A is forged, counterfeited, or otherwise falsely executed, or if the Form I-864 or Form I-864A conceals or misrepresents facts concerning household size, household income, employment history, or any other material fact. Any person who knowingly participated in the forgery, counterfeiting, or false production of a Form I-864 or Form I-864A, or in any concealment or misrepresentation of any material fact, may be subject to a civil penalty under section 274C of the Act, to criminal prosecution, or to both, to the extent permitted by law. If the person is an alien, the person may also be subject to removal from the United States.

(d) *Legal effect of affidavit of support.* Execution of a Form I-864 under this section creates a contract between the sponsor and the U.S. Government for the benefit of the sponsored immigrant, and of any Federal, State, or local governmental agency or private entity that administers any means-tested public benefits program. The sponsored immigrant, or any Federal, State, or local governmental agency or private entity that provides any means-tested public benefit to the sponsored immigrant after the sponsored immigrant acquires permanent resident status, may seek enforcement

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of the sponsor's obligations through an appropriate civil action.

(e) *Commencement and termination of support obligation.* (1) With respect to any intending immigrant, the support obligation and change of address obligation imposed on a sponsor, substitute sponsor, or joint sponsor under Form I-864, and any household member's support obligation under Form I-864A, all begin when the immigration officer or the immigration judge grants the intending immigrant's application for admission as an immigrant or for adjustment of status on the basis of an application for admission or adjustment that included the Form I-864 or Form I-864A. Any person completing and submitting a Form I-864 as a joint sponsor or a Form I-864A as a household member is not bound to any obligations under section 213A of the Act if, notwithstanding his or her signing of a Form I-864 or Form I-864A, the Department of State officer (in deciding an application for an immigrant visa) or the immigration officer or immigration judge (in deciding an application for admission or adjustment of status) includes in the decision a specific finding that the sponsor or substitute sponsor's own household income is sufficient to meet the income requirements under section 213A of the Act.

(2)(i) The support obligation and the change of address reporting requirement imposed on a sponsor, substitute sponsor and joint sponsor under Form I-864, and any household member's support obligation under Form I-864A, all terminate by operation of law when the sponsored immigrant:

(A) Becomes a citizen of the United States;

(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;

(C) Ceases to hold the status of an alien lawfully admitted for permanent residence and departs the United States (if the sponsored immigrant has not filed USCIS Form I-407, Abandon-

ment of Lawful Permanent Resident Status, this provision will apply only if the sponsored immigrant is found in a removal proceeding to have abandoned that status while abroad);

(D) Obtains in a removal proceeding a new grant of adjustment of status as relief from removal (in this case, if the sponsored immigrant is still subject to the affidavit of support requirement under this part, then any individual(s) who signed the Form I-864 or I-864A in relation to the new adjustment application will be subject to the obligations of this part, rather than those who signed a Form I-864 or I-864A in relation to an earlier grant of admission as an immigrant or of adjustment of status); or

(E) Dies.

(ii) The support obligation under Form I-864 also terminates if the sponsor, substitute sponsor or joint sponsor dies. A household member's obligation under Form I-864A terminates when the household member dies. The death of one person who had a support obligation under a Form I-864 or Form I-864A does not terminate the support obligation of any other sponsor, substitute sponsor, joint sponsor, or household member with respect to the same sponsored immigrant.

(3) The termination of the sponsor's, substitute sponsor's, or joint sponsor's obligations under Form I-864 or of a household member's obligations under Form I-864A does not relieve the sponsor, substitute sponsor, joint sponsor, or household member (or their respective estates) of any reimbursement obligation under section 213A(b) of the Act and this section that accrued before the support obligation terminated.

(f) *Withdrawal of Form I-864 or Form I-864A.* (1) In an immigrant visa case, once the sponsor, substitute sponsor, joint sponsor, household member, or intending immigrant has presented a signed Form I-864 or Form I-864A to a Department of State officer, the sponsor, substitute sponsor, joint sponsor, or household member may disavow his or her agreement to act as sponsor, substitute sponsor, joint sponsor, or household member if he or she does so in writing and submits the document

to the Department of State officer before the actual issuance of an immigrant visa to the intending immigrant. Once the intending immigrant has obtained an immigrant visa, a sponsor, substitute sponsor, joint sponsor, or household member cannot disavow his or her agreement to act as a sponsor, joint sponsor, or household member unless the person or entity who filed the visa petition withdraws the visa petition in writing, as specified in 8 CFR 205.1(a)(3)(i)(A) or 8 CFR 205.1(a)(3)(iii)(C), and also notifies the Department of State officer who issued the visa of the withdrawal of the petition.

(2) In an adjustment of status case, once the sponsor, substitute sponsor, joint sponsor, household member, or intending immigrant has presented a signed Form I-864 or Form I-864A to an immigration officer or immigration judge, the sponsor, substitute sponsor, joint sponsor, or household member may disavow his or her agreement to act as sponsor, substitute sponsor, joint sponsor, or household member only if he or she does so in writing and submits the document to the immigration officer or immigration judge before the decision on the adjustment application.

(g) *Aliens who accompany or follow-to-join a principal intending immigrant.* (1) To avoid inadmissibility under section 212(a)(4) of the Act, an alien who applies for an immigrant visa, admission, or adjustment of status as an alien who is accompanying, as defined in 22 CFR 40.1, a principal intending immigrant must submit clear and true photocopies of the signed Form(s) I-864 (and any Form(s) I-864A) filed on behalf of the principal intending immigrant.

(2)(i) To avoid inadmissibility under section 212(a)(4) of the Act, an alien who applies for an immigrant visa, admission, or adjustment of status as an alien who is following-to-join a principal intending immigrant must submit new Forms I-864 and I-864A, together with all documents or other evidence necessary to prove that the new Forms I-864 and I-864A comply with the requirements of section 213A of the Act and 8 CFR part 213a.

(ii) When paragraph (g)(2)(i) of this section requires the filing of a new

Form I-864 for an alien who seeks to follow-to-join a principal sponsored immigrant, the same sponsor who filed the visa petition and Form I-864 for the principal sponsored immigrant must file the new Form I-864 on behalf of the alien seeking to follow-to-join. If that person has died, then the alien seeking to follow-to-join is inadmissible unless a substitute sponsor, as defined by 8 CFR 213a.1, signs a new Form I-864 that meets the requirements of this section. Forms I-864A may be signed by persons other than the person or persons who signed Forms I-864A on behalf of the principal sponsored immigrant.

(iii) If a joint sponsor is needed in the case of an alien who seeks to follow-to-join a principal sponsored immigrant, and the principal sponsored immigrant also required a joint sponsor when the principal sponsored immigrant immigrated, that same person may, but is not required to be, the joint sponsor for the alien who seeks to follow-to-join the principal sponsored immigrant.

[62 FR 54352, Oct. 20, 1997; 62 FR 60122, Nov. 6, 1997; 62 FR 64048, Dec. 3, 1997; 71 FR 35750, June 21, 2006; 72 FR 56867, Oct. 4, 2007]

§ 213a.3 Notice of change of address.

(a)(1) If the address of a sponsor (including a substitute sponsor or joint sponsor) changes for any reason while the sponsor's support obligation under the affidavit of support remains in effect with respect to any sponsored immigrant, the sponsor shall file Form I-865, Sponsor's Notice of Change of Address, with U.S. Citizenship and Immigration Services (USCIS) no later than 30 days after the change of address becomes effective. As evidence that the sponsor, substitute sponsor, or joint sponsor has complied with this requirement, USCIS will accept a photocopy of the properly completed Form I-865, together with proof of the Form's delivery to the proper service center (such as a post-marked United States Postal Service Express Mail or certified mail receipt, showing that the sponsor mailed the Form I-865 to the proper USCIS service center, together with the corresponding post-marked United States Postal Service return receipt card or other proof of delivery provided by the United States Postal Service, or, if the sponsor, substitute

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sponsor, or joint sponsor sent the Form I-865 by a commercial delivery service, a photocopy of the shipping label and signature proof of delivery).

(2) If the sponsor is an alien, filing Form I-865 does not relieve the sponsor of the requirement under 8 CFR 265.1 also to file a Form AR-11, Alien's Change of Address Card.

(b) *Civil penalty*—(1) *Amount of penalty.* (i) Except as provided in paragraph (b)(1)(ii) of this section, if the sponsor fails to give notice in accordance with paragraph (a) of this section, the Service may impose on the sponsor a civil penalty in an amount within the penalty range established in section 213A(d)(2)(A) of the Act.

(ii) If the sponsor, knowing that the sponsored immigrant has received any means-tested public benefit, fails to give notice in accordance with paragraph (a) of this section, the Service may impose on the sponsor a civil penalty in an amount within the penalty range established in section 213A(d)(2)(B) of the Act.

(2) *Procedure for imposing penalty.* The procedure for imposing a civil penalty under this paragraph follows that which is established at 8 CFR part 280.

(c) *Change of address.* If the sponsor is an alien, filing Form I-865 under this section does not satisfy or substitute for the change of address notice required under § 265.1 of this chapter.

[62 FR 54352, Oct. 20, 1997, as amended at 71 FR 35755, June 21, 2006]

§ 213a.4 Actions for reimbursement, public notice, and congressional reports.

(a) *Requests for reimbursement; commencement of civil action.* (1) *By agencies.* (i) If an agency that provides a means-tested public benefit to a sponsored immigrant wants to seek reimbursement from a sponsor, household member, or joint sponsor, the program official must arrange for service of a written request for reimbursement upon the sponsor, household member, or joint sponsor, by personal service, as defined by 8 CFR 103.5a(a)(2), except that the person making personal service need not be a Federal Government officer or employee.

(ii) The request for reimbursement must specify the date the sponsor,

household member, or joint sponsor's support obligation commenced (this is the date the sponsored immigrant became a permanent resident), the sponsored immigrant's name, alien registration number, address, and date of birth, as well as the types of means-tested public benefit(s) that the sponsored immigrant received, the dates the sponsored immigrant received the means-tested public benefit(s), and the total amount of the means-tested public benefit(s) received.

(iii) It is not necessary to make a separate request for each type of means-tested public benefit, nor for each separate payment. The agency may instead aggregate in a single request all benefit payments the agency has made as of the date of the request. A state or local government may make a single reimbursement request on behalf of all of the state or local government agencies that have provided means-tested public benefits.

(iv) So that the sponsor, household member, or joint sponsor may verify the accuracy of the request, the request for reimbursement must include an itemized statement supporting the claim for reimbursement. The request for reimbursement must also include a notification to the sponsor, household member, or joint sponsor that the sponsor, household member, or joint sponsor must, within 45 days of the date of service, respond to the request for reimbursement either by paying the reimbursement or by arranging to commence payments pursuant to a payment schedule that is agreeable to the program official.

(v) Prior to filing a lawsuit against a sponsor, household member, or joint sponsor to enforce the sponsor, household member, or joint sponsor's support obligation under section 213A(b)(2) of the Act, a Federal, state, or local governmental agency or a private entity must wait 45 days from the date it serves a written request for reimbursement in accordance with this section.

(2) *By the sponsored immigrant.* Section 213A(b) of the Act does not require a sponsored immigrant to request the sponsor or joint sponsor to comply with the support obligation, before bringing an action to compel compliance.

(3) *Role of USCIS and DHS.* Upon the receipt of a duly issued subpoena, USCIS may provide a certified copy of a Form I-864 or Form I-864A that has been filed on behalf of a specific alien for use as evidence in a civil action to enforce the Form I-864 or Form I-864A, and may also disclose the last known address and social security number of the sponsor, substitute sponsor, or joint sponsor. Requesting information through the Systematic Alien Verification for Entitlement (SAVE) Program is sufficient, and a subpoena is not required, to obtain the sponsored immigrant's current immigration or citizenship status or the name, social security number and last known address of a sponsor, substitute sponsor, or joint sponsor.

(b) *Designation of means-tested public benefits.* Federal, State, and local government agencies should issue public notice of determinations regarding which benefits are considered "means-tested public benefits" prior to December 19, 1997, the date the new affidavit of support goes into effect, or as soon as possible thereafter. Additional notices should be issued whenever an agency revises its determination of which benefits are considered "means-tested public benefits." A sponsor, joint sponsor, or household member is not liable to reimburse any agency for any benefit with respect to which a public notice of the determination that the benefit is a means-tested public benefit was not published until after the date the benefit was first provided to the immigrant.

(c) *Congressional reports.* (1) For purposes of section 213A(i)(3) of the Act, USCIS will consider a sponsor or joint sponsor to be in compliance with the financial obligations of section 213A of the Act unless a party that has obtained a final judgment enforcing the sponsor or joint sponsor's obligations under section 213A(a)(1)(A) or 213A(b) of the Act has provided a copy of the final judgment to the USCIS by mailing a certified copy to the address listed in paragraph (c)(3) of this section. The copy should be accompanied by a cover letter that includes the reference "Civil Judgments for Congressional Reports under section 213A(i)(3) of the Act." Failure to file a certified copy of the

final civil judgment in accordance with this section has no effect on the plaintiff's ability to collect on the judgment pursuant to law.

(2) If a Federal, state, or local agency or private entity that administers any means-tested public benefit makes a determination under section 421(e) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 in the case of any sponsored immigrant, the program official shall send written notice of the determination, including the name of the sponsored immigrant and of the sponsor, to the address listed in paragraph (c)(3) of this section. The written notice should include the reference "Determinations under 421(e) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996."

(3) The address referred to in paragraphs (c)(1) and (c)(2) of this section is: Office of Program and Regulation Development, U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue, NW., Washington, DC, 20529.

[62 FR 54352, Oct. 20, 1997, as amended at 71 FR 35755, June 21, 2006]

§213a.5 Relationship of this part to other affidavits of support.

Nothing in this part precludes the continued use of Form I-134, Affidavit of Support (other than INA section 213A), or of Form I-361, Affidavit of Financial Support and Intent to Petition for Legal Custody for Public Law 97-359 Amerasian, in any case, other than a case described in §213a.2(a)(2), in which these forms were used prior to enactment of section 213A of the Act. The obligations of section 213A of the Act do not bind a person who executes Form I-134 or Form I-361, although the person who executes Form I-361 remains subject to the provisions of section 204(f)(4)(B) of the Act and of §204.4(i) of this chapter.

PART 214—NONIMMIGRANT CLASSES

Sec.

214.1 Requirements for admission, extension, and maintenance of status.

214.2 Special requirements for admission, extension, and maintenance of status.