



June 21, 2006

Questions and Answers (Q&As)

USCIS ISSUES FINAL RULE REGARDING AFFIDAVITS OF SUPPORT

Q. What is the Affidavits of Support on Behalf of Immigrants final rule?

A. The Affidavits of Support final rule adopts, with specified changes, an interim rule published by the former Immigration and Naturalization Service on October 20, 1997 and made effective on December 19, 1997 (62 FR 54346). This final rule responds to public comments to the interim rule and addresses several issues raised by the interim rule, including: who needs an affidavit of support; how sponsors qualify; what information and documentation sponsors must present; and when the income of other persons may be used to support an intending immigrant's application for permanent residence. The final rule makes the affidavit of support process less burdensome for sponsors while continuing to ensure that each intending immigrant has a sponsor who has sufficient income and/or assets to support the immigrant(s) he or she is sponsoring. The final rule allows the sponsored intending immigrant to establish that he or she is not likely to become a public charge (e.g., receive certain federal or state means-tested benefits).

Q. When is this final rule effective?

A. This final rule is effective July 21, 2006. It will apply to any application for an immigrant visa or adjustment of status that is decided on or after July 21, 2006 even if the case was filed before July 21, 2006.

NOTE: The following Q&As briefly discuss some of the changes to the affidavit of support process made by the "Affidavits of Support on Behalf of Immigrants" final rule. For a complete description of the provisions of this rule, please refer to the final rule as published in the Federal Register at 71 FR 35732, <http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/06-5522.htm>.

Q. Does the final rule provide exemptions for the requirement to file an Affidavit of Support (Form I-864)?

A. Yes. The final rule eliminates the affidavit of support requirement in cases where the sponsored immigrant establishes on the basis of Social Security Administration records that he or she has already worked, or can be credited with having worked, 40 quarters of covered employment.

The final rule also eliminates the requirement of a Form I-864 in the case of the child of a U.S. citizen that, if admitted for permanent residence on or after February 27, 2001, would automatically acquire citizenship immediately upon entry under section 320 of the Immigration and Nationality Act (the Act), as amended by

the Child Citizenship Act of 2000. In addition, there is no need for an affidavit of support for certain children who accompany their immigrant parent(s) to the United States, but are born after issuance of the immigrant visa to the parent(s) (that is, children who immigrate under section 211(a) of the Act).

Q. Does the final rule establish any new forms?

A. Yes. The final rule establishes two new forms: the EZ Affidavit of Support (Form I-864EZ) and the Intending Immigrant's I-864 Exemption (Form I-864W). If the petitioner is the only sponsor and he or she is relying only upon income from his or her employment to meet the affidavit of support requirements, the petitioner will be able to file a short form Affidavit of Support, the new EZ Affidavit of Support (Form I-864EZ). Form I-864W provides eligible immigrants a more expeditious means to establish that they are not required to have an affidavit of support filed on their behalf. The final rule also amends Form I-864, Affidavit of Support, and Form I-864A, to conform them to the final rule.

Q. When will USCIS begin to accept Form I-864EZ, Form I-864W, and the amended Form I-864 and Form I-864A? Will USCIS continue to accept old versions of Form I-864?

A. USCIS will begin to accept Form I-864EZ, Form I-864W, the amended Form I-864, and the amended Form I-864A immediately. USCIS will continue to accept old versions of the Form I-864, but only until October 19, 2006, a grace period of 90 days from July 21, 2006, the effective date of the final rule.

Q. If I have already submitted an old version of Form I-864, do I now need to submit a new Form I-864?

A. No. If you submitted an old version of Form I-864, you should not submit a new Form I-864.

Q. Does the final rule change the instructions for preparing the Affidavit of Support?

A. Yes. The final rule requires each sponsor to submit as initial evidence only his or her single most recent federal tax return rather than a return from each of the sponsor's three most recent tax years, pay stub(s) covering the most recent six months, and an employer letter. In addition, it will no longer be necessary to sign an Affidavit of Support, EZ Affidavit of Support, and Contract Between Household Member and Sponsor (Form I-864A) in front of a notary public, immigration officer, or consular officer. Rather, as permitted by Federal law, the forms will provide that they are signed "under penalty of perjury." Both of these measures lessen the burden on sponsors and household members without reducing the legal standing or enforceability of the documents they sign.

Q. Does the final rule change how many joint sponsors an immigrating family can have?

A. Yes. In addition to the primary sponsor (who signed the visa petition), the final rule allows two joint sponsors per family unit intending to immigrate based upon the same family petition. No individual may have more than one joint sponsor, but it will no longer be necessary for all family members to have the same sponsor. If two joint sponsors are used, each joint sponsor is responsible for supporting only for the intending immigrant(s) listed on that joint sponsor's Form I-864, Affidavit of Support.

Q. My sponsor's income has varied from year to year. What year is most significant in determining the sufficiency of my sponsor's income?

A. The final rule clarifies that the sponsor's income in the year in which the intending immigrant filed an application for an immigrant visa or adjustment of status, rather than the earnings last reported to IRS, generally bears the greatest evidentiary weight in determining whether the affidavit of support is sufficient. However, USCIS may request updated evidence and decide the case based on the updated information.

Q. It looks like my sponsor's household income meets or exceeds the poverty guideline for his or her household size. How does the final rule change the instructions on calculating household size?

A. The final rule allows, but does not require, sponsors to include the income of any relative in the household who is not a dependent if (1) the sponsor includes the relative as part of the sponsor's household size, and (2) the relative completes a Contract Between Sponsor and Household Member (Form I-864A).

Q. Does a household member have to be living in the household for any specified amount of time under the final rule?

A. No. The final rule eliminates the requirement that household members must have lived in the sponsor's household for at least six months before their income may be included in household income. Instead, the final rule allows the income of household members, including the intending immigrant, to be included if the income will continue from the same source after the beneficiary attains permanent resident alien status.

Q. My sponsor has used means-tested benefits in the past. Will this affect their ability to sponsor me?

A. No. The supplementary information that was published with the final rule clarifies that use of certain means-tested public benefits does not affect a person's ability to sponsor an intending immigrant.

Q. My sponsor and/or joint sponsor is using significant assets as part of his affidavit of support. Does the final rule change the requirements for significant assets?

A. Yes. The final rule reduces the value of assets that immediate relative spouses and children of U.S. citizens must have to fill the gap between earned income and the poverty guidelines from five times the difference to three. The gap is reduced further for those sponsoring adopted children who will qualify for citizenship under the Child Citizenship Act, but who do not qualify immediately upon entry.

Q. My original petitioner cannot sponsor me because he or she died. What relief is available to me under the final rule?

A. The final rule implements the Family Sponsor Immigrant Act of 2002, Pub. L. 107-150, which allows the beneficiary of a petition to use of a "substitute sponsor" after the death of the original petitioner if the original petition had been approved prior to the petitioner's death and other conditions are met. In order to be a "substitute sponsor," you must be the spouse, parent, mother-in-law, father-in-law, sibling, child (if at least 18 years of age), son, daughter, son-in-law, daughter-in-law, sister-in-law, brother-in-law, grandparent, grandchild, or a legal guardian of the intending immigrant.

The final rule also provides that, if a petitioner files a petition to classify the beneficiary as a spouse of a United States citizen petitioner and then dies, the petition will be treated as approved as a Petition for Amerasian, Widow(er) or Special Immigrant (Form I-360) if (1) USCIS or legacy INS approved the original petition before the petitioner died, and (2) on the date of the petitioner's death, the beneficiary satisfies certain requirements.

Q. My sponsor lives abroad. Does this mean he or she cannot sponsor me?

A. It depends upon where your sponsor has his or her legal domicile. To file an affidavit of support, a sponsor must have his or her domicile in the United States. Under the final rule, a sponsor is domiciled at the place of his or her principal residence. Therefore, your sponsor may file an affidavit of support if he or she shows, by a preponderance of the evidence, that his or her domicile is still in the United States because he or she is only residing abroad temporarily.

The final rule also clarifies that a sponsor who is not domiciled in the United States may submit an Affidavit of Support if the sponsor shows, by a preponderance of the evidence, that he or she will establish his or her domicile in the United States no later than the date of the intending immigrant's admission or adjustment of status. Thus, the sponsor must arrive and establish domicile in the United States before or at the same time as when the intending immigrant becomes a lawful permanent resident through adjustment of status or admission on an immigrant visa at a port of entry.

Q. If I am in removal proceedings, and have applied for adjustment of status, who has jurisdiction to review my affidavit of support?

A. The final rule clarifies that when an alien applies for adjustment of status in removal proceedings, the immigration judge's jurisdiction to adjudicate the adjustment application includes authority to review the sufficiency of the affidavit of support.

Q. May USCIS disclose a sponsor's social security number and last known address to a benefit-granting agency?

A. Yes. The final rule clarifies that USCIS may disclose a sponsor's social security number, as well as the sponsor's last known address, to a benefit-granting agency seeking to obtain reimbursement from the sponsor when an alien applies for a benefit.

The new Affidavit of Support forms will be available on the USCIS website at www.uscis.gov, at local USCIS offices, and via the USCIS Forms line, 1-800-870-3676. For complete information please see the "Affidavits of Support on Behalf of Immigrants" Final Rule as published in the Federal Register at <http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/06-5522.htm> (71 FR 35732).

For additional information, visit the USCIS website, www.uscis.gov, or contact the USCIS National Customer Service Center at 1-800-375-5283.

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