

8 C.F.R. § 213A.2(c) – Use of affidavit of support

(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)(1) 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 an affidavit of support 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 an affidavit of support 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 an affidavit of support. 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 the 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 an affidavit of support, 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 a 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 an affidavit of support 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 an affidavit of support.

(C)(I) 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 an affidavit of support attachment. A person does not need to be a U.S. citizen, national, or alien lawfully admitted for permanent residence in order to sign an affidavit of support attachment.

(2) Each individual who signs an affidavit of support attachment agrees, in consideration of the sponsor's signing of the an affidavit of support, 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 .

(4) If the sponsor relies on the income of any individual who has signed an affidavit of support attachment, the sponsor must also include with thean affidavit of support and an affidavit of support attachment, with respect to the person who signed the an affidavit of support attachment, 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 an affidavit of support attachment 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 affidavit of support attachment 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 affidavit of support attachment signer has the same principal residence as the sponsor. If an intending immigrant signs an affidavit of support attachment, 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 affidavit of support or an affidavit of support attachment 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 affidavit of support

or an affidavit of support attachment 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 Guidelines 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 affidavit of support 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 affidavit of support.

(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 an affidavit of support attachment. The assets of any person who has signed an affidavit of support attachment 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 affidavit of support on behalf of the intending immigrant(s) and be willing to accept joint and several liabilities with the sponsor or substitute sponsor. A joint sponsor must meet all the eligibility requirements under paragraph (c)(1) of this section, except that the joint sponsor is not required to file 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 percent 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 percent 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 affidavit that it is

submitted only on behalf of the principal intending immigrant and those accompanying family members specifically listed on the affidavit. The remaining accompanying family members will then be inadmissible under section 212(a)(4) of the Act unless a second joint sponsor submits an affidavit(s) 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 affidavit. 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.

(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 an affidavit of support. 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 an affidavit of support.

(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 an affidavit of support, 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 Department of State officer who has jurisdiction to adjudicate the case to which the affidavit of support or an affidavit of support attachment 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 affidavit of support or an affidavit of support attachment, so that, in adjudicating the intending immigrant's application for an immigrant visa or adjustment of status, the affidavit of support or an affidavit of support attachment will be deemed not to have been filed.

(vi) *Effect of fraud or material concealment or misrepresentation.* An affidavit of support or an affidavit of support attachment 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 an affidavit of support or an affidavit of support attachment is forged, counterfeited, or otherwise falsely executed, or if the affidavit of support or an affidavit of support attachment 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 an affidavit of support or an affidavit of support attachment, 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.

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