



# The Affidavit of Support and Immigrant Eligibility for Public Benefits

(Updated April 2002)

This form will help you to determine what kind of benefits a person who immigrated to the U.S. with an affidavit of support is eligible to receive. To determine eligibility, you will need to know which kind of affidavit of support was filed -- the affidavit of support form I-134, or the affidavit of support form I-864.

## The Affidavit of Support

In order to petition for a family member to immigrate to the U.S., the petitioner (the lawful permanent resident or U.S. citizen family member) must sign an INS form called an Affidavit of Support in which he pledges to financially support the immigrating relative. INS requires this pledge of support to ensure that the immigrating relative will not become dependent on public benefits. Prior to December 19, 1997, the form was called an I-134 and was not filed if the immigrating relative could show that she had a job offer or a long work history. The I-134 form was also used by some other immigrants, such as public interest parolees and diversity visa immigrants.

The new forms, called I-864s, were introduced on December 19, 1997 and are required in **all** family visa petitions and some employment visa petitions. **They are not used by other immigrants such as public interest parolees and diversity visa immigrants who continue to use the I-134.**

## The "Sponsor"

The person who signs the affidavit of support is called a "sponsor." The use of this word "sponsor" is confusing because it can be used to describe both the person who petitions for an immigrant and agencies that help refugees get resettled.

**Refugees, political asylees or persons granted withholding of deportation do not need affidavits of support because they are admitted to the U.S. for humanitarian reasons.** If one of these immigrants is discussing a "sponsor" it is probably a resettlement agency. For the purpose of applying for public assistance, a "sponsor" is an individual **who filled out an affidavit of support.**

## Clients With Affidavits of Support Form I-134

- Effect on the immigrant: **The Washington State DSHS has issued new rules that will not apply sponsor deeming in cases where the affidavit of support is an I-134.** The I-134 still is used by INS in some cases such as

public interest parolees, but it should not be considered in determining eligibility for Washington state programs. Some special rules apply to eligibility for SSI and you should consult an attorney to discuss your case. Effect on the sponsor: The Affidavit of support form I-134 is not legally binding on the sponsor. This means that neither the sponsored immigrant nor the government can sue the sponsor to recover the cost of public benefits paid to the sponsored immigrant.

### **How Does an Immigrant Know What Kind of Affidavit of Support Was Filled Out on Her Behalf?**

Most immigrants do not have a copy of the affidavit of support filled out on their behalf since it was filed by the relative and often the only copy is in their INS file. Getting a copy from INS can be done by means of a Freedom of Information Act (FOIA) request but may take months. The DSHS manual tells workers to get another form of verification if the affidavit of support is available and not to delay benefits if the information is available from another source. It is possible for the sponsor to provide a statement about the kind of affidavit of support filed and also the approximate date. Remember that only certain immigrants (family visas and some employment related) will have an I-864. Also, no one who received their lawful permanent residence (green card) before December 19, 1997 will have one of the new affidavits of support since it was not available before that time. Finally, in some circumstances, such as domestic violence or those facing hunger or homelessness, the immigrant is **exempt** from sponsor deeming and the benefits should not be delayed to try and get a copy of the affidavit. In other circumstances, such as eligibility for emergency Medicaid, the affidavit of support does not apply and similarly, benefits should not be delayed.

### **Who Will Have a New Affidavit of Support Form I-864?**

New affidavits of support (Form I-864) are required for all family-based visas and applications for adjustments of status filed on or after December 19, 1997. The new forms are required in almost all new family visa petitions, with four exceptions:

- widows/widowers filing based on prior marriage to a U.S. citizen
- U.S. citizen parents who are petitioning for legal residence for their children do not have to provide an affidavit of support because a new law makes them citizens immediately after receiving their green cards
- battered spouses and children filing self petitions based on relationship to a U.S. citizen or legal permanent resident who was responsible for the battery
- the immigrant who is sponsored can be credited with 40 quarters of work history (quarters must be earned by the immigrant, a spouse, or parents—for years the immigrant was under 18)

The new affidavits of support are also required in employment-based visas where the petition is filed by a relative or business in which the relative has a five percent ownership interest.

### **Who Completes the New Affidavit of Support Form I-864?**

The sponsor must be a U.S. citizen, national or permanent resident alien, at least 18 years old, and living in the U.S. The affidavit of support must also be signed by the person petitioning for the relative.

### **How Much Income Must the Sponsor Have?**

The sponsor must have enough income to support both himself (and any dependents) as well as the person(s) immigrating at or above the 125% federal poverty guidelines. (There is a provision allowing Armed Forces members petitioning a spouse or child to meet only the 100% guidelines.) Income from spouses, dependents and other relatives living in the sponsor's household for at least six months may be combined to meet the 125% guidelines but an additional side contract is required. Where the income is not enough to meet the 125% guidelines, certain assets may be used if they equal five times the required income. **If this sponsor's income is too low, another person must be found who will accept full liability as a joint sponsor.**

### **Clients with Affidavit of Support Form I-864**

- Effect on the immigrant: "Sponsor deeming" is a process by which a portion of the sponsor's income and resources is considered in calculating whether the sponsored immigrant is eligible for some types of assistance. Under the new affidavits of support, sponsor deeming will apply to federal means tested benefits (such as TANF, Medicaid, SSI and Food Stamps) and to some state benefits (such as state family assistance, state food assistance, GA-U and some medical programs). In some cases, the immigrant will not be eligible for these benefits while the affidavit of support is in effect. In other cases, the immigrant may still be eligible for assistance. In some cases, the immigrant (or the agency which provides benefits) may be able to sue to get the sponsor to provide support.
- Effect on the sponsor: The new affidavits of support are potentially legally enforceable against the sponsor although there is still no clear guidance on what kind of support the sponsor is required to provide. However, it may mean that the state or federal government may be able to seek reimbursement from the sponsor if public benefits have been provided to the sponsored immigrant. The new rules require the sponsor to notify the government of any changes of address. The sponsor can be fined up to \$5000 for failure to notify the government when the sponsor moves.

### **The Sponsor's Obligation Under Affidavit of Support Form I-864**

The sponsor's obligation ends when:

**(for both federal and state-funded programs)**

- the sponsor dies; or
- the sponsored immigrant becomes a U.S. citizen, (See below for more information on how an immigrant becomes a citizen)

- can be credited with 40 quarters of employment in the U.S. (see below for information on 40 quarters)
- leaves the U.S. and abandons permanent resident status,
- or dies

**(for state-funded programs only)**

the sponsor's obligation also ends

- five years after the affidavit of support is signed
- **when** the sponsor is incapacitated (a letter from a doctor must be submitted)
- if the immigrant (and that immigrant's spouse and unmarried dependent children) is on active duty, or is a veteran of the armed forces of the U.S. or of an allied country, or was employed by an agency of the federal government during a military conflict between the U.S. and a military adversary (a statement of the participation in conflict may be accepted if no other documentation is available.)

**How Does an Immigrant Prove She has become a Citizen?**

People who are born in the United States are automatically citizens. Those who are born abroad may be able to show they are citizens because their parents were U.S. citizens. (They should consult an immigration attorney to help them determine if they qualify). However, most immigrants who immigrate to the United States as adults can naturalize (become citizens) after they have been a lawful permanent resident for five years (only three years if married to a U.S. citizen). See "*Common Questions about Naturalization*" for more information. On February 27, 2001 a new law passed which made it easier to children to automatically become citizens when their parents naturalize. See "*Common Questions About Naturalization and Children*" for more information. The welfare department does not require a parent to get proof of citizenship from the INS, a statement of the citizen parent and a copy of the parent's certificate of naturalization will suffice.

**How Can an Immigrant Be Credited with Work Quarters?**

**Immigrants are credited with work quarters** (as defined under Title II of the Social Security Act) **when they or certain family members have worked in the United States.** In addition to her own work quarters, the immigrant can be credited for a **spouse's** quarters earned during a marriage. (For the purposes of getting SSI and federal food stamps, the immigrant "loses" her spouses quarters once she is divorced. For the affidavit of support which is a "contract", once it is terminated due to work quarters, **it is no longer in effect, divorce does not bring the affidavit back into effect.**) The immigrant can also be credited for a **parent's** quarters worked while the immigrant was under 18 (including a parent's quarters earned before the child was born). As is the case in determining eligibility for federal food stamps, the welfare office should assist an immigrant in determining how many quarters are credited to herself, her spouse and her parents (for the years before she was 18) by verifying the information directly with

the Social Security Administration. Credit for quarters earned after December 31, 1996 can only be given if no federal means-tested benefits are received in that quarter. For more information on work quarters see our brochure " *Common Questions about Proof of 40 Quarters of Earnings Under the Welfare Reform Law.*"

**Even If the Affidavit of Support is Still in Effect, it is Possible that the Sponsored Immigrant is Eligible for Benefits (especially Medical Assistance)!** This is because the sponsor deeming rules require that some of the sponsor's income and resources be considered available for the support of the sponsor's dependents (including other immigrants he may have sponsored). The remaining income and resources considered available to the sponsored immigrant may still be below the income levels of medical and even cash and food stamp programs.

**Even If the Affidavit of Support Has not yet Ended Some Immigrants With Form I-864 Are Exempt From Sponsor Deeming.**

The following groups are **exempt** from deeming for both *federal* and *state* benefits. **This means they should not have to provide a copy of the affidavit of support and should not have any income or resources deemed available to them.** *Remember, if the sponsor is a spouse or parent then normal spousal and parent deeming rules will still apply:*

- **Domestic violence victims**, provided they are no longer living with the batterer and that the domestic violence has a substantial connection to the need for benefits. (This exemption can be permanent in certain circumstances)
- **Immigrants facing hunger or homelessness**, provided the assistance is necessary to prevent hunger or homelessness. The state has issued regulations saying that an immigrant with income below 130% of federal poverty guidelines may qualify for this exemption. (This exemption, which is granted for 12 months, can be renewed).
- **Immigrants who are living in a household with a sponsor who is eligible for benefits.** (The sponsor will not be liable to repay benefits received.)

**Even if An Immigrant is Not Covered by One of the Exemptions Above, the Following Public Benefits Are Available To Immigrants With An Affidavit of Support Form I-864 Which Is Still In Effect. However, the Welfare Department May Incorrectly Fail to Review a Sponsored Immigrant's Application to Determine Eligibility for These Benefits!**

Immigrants with an affidavit of support Form I-864 may still receive the following benefits:

#### Federal Benefits

- **Emergency Medicaid**
- Immunizations and testing and treatment of the symptoms of communicable diseases, whether or not such symptoms are caused by a communicable disease

- Short-term non-cash disaster relief
- School Lunch Act programs
- Child Nutrition Act programs
- Title IV Parts B and E Foster Care and Adoption Assistance payments, but only if the adoptive or foster parents are “qualified” aliens
- Higher education loans and grants (including those under the Public Health Service Act)
- Elementary and Secondary Education Act
- Head Start
- Job Training Partnership Act (JTPA) and
- At the Attorney General’s discretion, community programs that (1) do not condition assistance on individual income or resources and (2) are necessary to protect life or safety (e.g. soup kitchens, assistance for victims of abuse, health services, and short-term shelter)

Because Most State Benefits Do Not Apply Sponsor Deeming, It is easier to list here those that do. Only the benefit programs listed below apply sponsor deeming (exemptions etc. may still mean the immigrant can get benefits).

- State Family Assistance
- State Food Assistance Program
- SFA related medical program
- State funded Children’s and Pregnancy related health program
- General Assistance Unemployable Program (and medical programs)
- Limited Casualty Program Medically Indigent (it is likely this restriction is contrary to federal law and you should consult an attorney if denied this program due to a sponsor’s income).

### **When is a Sponsor Liable to Be Asked to Repay Benefits Received by a Sponsored Immigrant?**

Once the affidavit of support is no longer in effect (see above) benefits received after that time will not be the sponsor’s liability. The question of whether a sponsor may be liable to repay benefits received by an immigrant who is exempt (say because of domestic violence or below 130% of the federal poverty income level) or who is simply eligible for the benefit even with the sponsor’s income and resources deemed available, is still undecided. For more information, contact an immigration attorney or a legal services attorney.

### **What Should I do if I have Questions about Sponsor Deeming?**

If you have questions about sponsor deeming and you need benefits, be sure to apply for assistance. If you meet regular program requirements you will most likely

be eligible for assistance, either because you qualify for one of the exemptions described above or because your income is below 130% of the federal poverty guidelines. If you are denied assistance, you can request a fair hearing and seek legal assistance.

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