

## 9 FAM 40.41 Procedural Notes

(TL:VISA-593; 11-05-2003)  
(Office of Origin: CA/VO/L/R)

### 9 FAM 40.41 PN1 Submitting Form I-864, *Affidavit of Support Under Section 213A of the Act*

#### 9 FAM 40.41 PN1.1 Notarizing and Photocopying Documentation

(TL:VISA-593; 11-05-2003)

a. All required signatures of the sponsor(s), or the sponsor's household members or dependents must be notarized by a U. S. notary public, if not signed in front of an immigration or consular officer. Principal applicants and accompanying spouses and/or children may travel together on one complete set of the documents prepared in support of Form I-864, *Affidavit of Support Under Section 213A of the Act*. The supporting documents should be made a part of the principal applicant's *Instruction Package for Immigrant Visa*. The principal applicant's alien registration number (the *Department of Homeland Security (DHS)* assigned "A number") should be recorded on each accompanying individual's Form I-864 in the "for agency use only" box (on page 1 of the form).

b. Similarly, following-to-join applicants, traveling either alone or in a group, will require only one complete set of the documents prepared in support of the principal applicant's Form I-864. In the case of a group of following-to-join applicants traveling together, the documents should only be included in one applicant's issued visa packet. The alien registration number of the applicant carrying the support documentation must be recorded on the Form I-864 of each following-to-join applicant in the group in the "for agency use only" box (on page 1 of the form). Each individual must still present Form I-864 at the time of the visa interview (so that it becomes part of the *Instruction Package for Immigrant Visa Applicants*) and the signatures on each affidavit must be original and notarized. The supporting documents carried by the designated following-to-join applicant may be photocopies of the originals and do not need notarization or an original signature.

## **9 FAM 40.41 PN1.2 Where to Submit**

(TL:VISA-593; 11-05-2003)

a. *As of October 1, 2002, all posts are participants in a review program at the National Visa Center (NVC). The sponsor (or joint sponsor) is instructed to send the Form I-864, Affidavit of Support Under Section 213A of the Act, and all supporting documents (a complete set for the principal and a signed and notarized original or photocopy of the principal applicant's Form I-864 (and Form I-864A, Contracts Between Sponsor and Household Member if necessary) for each accompanying dependent) directly to NVC. The NVC will review the submitted Form I-864 and documents for clerical completeness and provide the sponsor two opportunities to supply any missing information or documents. After the second review, NVC forwards the affidavit of support (AOS) with the case file directly to the posts.*

b. *The NVC review does not apply to immigrant visa (IV) cases where the petitioner has filed the Form I-130, Petition for Alien Relative, at post.*

## **9 FAM 40.41 PN2 Reviewing Form I-864, Affidavit of Support Under Section 213A of the Act**

(TL:VISA-342; 01-08-2002)

Consular officers must ensure that each section of Form I-864, *Affidavit of Support Under Section 213A of the Act*, has been completed properly. It is the consular officer's responsibility to review the information provided with the petition packet and other documents provided at the time of interview.

### **9 FAM 40.41 PN2.1 Part 1—Information on Sponsor**

(TL:VISA-230; 01-19-2001)

Sponsors must provide their social security numbers.

### **9 FAM 40.41 PN2.2 Part 2—Basis for Filing Affidavit of Support**

(TL:VISA-230; 01-19-2001)

Ensure that the appropriate box has been checked.

### **9 FAM 40.41 PN2.3 Part 3—Information on Sponsored Immigrant**

(TL:VISA-230; 01-19-2001)

The sponsor should list only the beneficiary and accompanying dependents.

## **9 FAM 40.41 PN2.4 Part 4—Eligibility to Sponsor**

(TL:VISA-230; 01-19-2001)

If the petitioner is the sponsor, proof of U.S. citizenship or lawful permanent resident (LPR) status will be included in the petition. Joint sponsors must submit proof of citizenship (copy of birth certificate, passport, etc.) or LPR status. An LPR must submit copies of **BOTH** sides of the Form I-551, *Permanent Resident Card*.

## **9 FAM 40.41 PN2.5 Evidence of Income**

(TL:VISA-342; 01-08-2002)

The sponsor or joint sponsor must demonstrate income and/or assets sufficient to meet the 125 percent minimum income requirement. If the income or assets of a household member are to be used, the household member (other than the applicant) must sign Form I-864A, *Contracts Between Sponsor and Household Member*. The applicant's income in the United States may be included with that of the sponsor, but the applicant cannot sign Form I-864A unless it is on behalf of accompanying dependents. The sponsor does not need to present evidence of assets if the income alone is adequate to meet the 125 percent requirement. Consular officers may, however, request evidence of assets and liabilities if that information is necessary to determine the applicant's eligibility under INA 212(a)(4).

## **9 FAM 40.41 PN2.6 Part 4A—Sponsor's Employment**

(TL:VISA-593; 11-05-2003)

See 9 FAM 40.41 N5.2-1.

## **9 FAM 40.41 PN2.7 Part 4B—Sponsor's Household Size**

(TL:VISA-593; 11-05-2003)

See 9 FAM 40.41 N7.1.

## **9 FAM 40.41 PN2.8 Part 4C—Sponsor's Annual Household Income**

(TL:VISA-230; 01-19-2001)

See 9 FAM 40.41 N7.1.

## **9 FAM 40.41 PN2.9 Part 4D—Sponsor's Annual Household Income**

(TL:VISA-342; 01-08-2002)

The income of anyone listed in Part 4C (with the exception of the sponsored immigrant) may be counted as long as the individual has signed Form I-864A, *Contracts Between Sponsor and Household Member*, and has been physically residing in the sponsor's house for the previous six months or is listed as a dependent on the sponsor's most recent federal income tax return. In the case of the sponsored immigrant, the applicant's income in the United States may be included with that of the sponsor, but the applicant cannot sign Form I-864, *Affidavit of Support Under Section 213A of the Act*, unless it is on behalf of accompanying dependents.

## **9 FAM 40.41 PN2.10 Federal Income Tax Returns**

### **9 FAM 40.41 PN2.10-1 Reviewing Income Tax Returns**

(TL:VISA-230; 01-19-2001)

See 9 FAM 40.41 N5. 2-1.

### **9 FAM 40.41 PN2.10-2 When Sponsor Cannot Provide Income Tax Returns**

(TL:VISA-342; 01-08-2002)

If the sponsor is unable to provide three years of federal income tax returns, he or she must provide a valid explanation. Failure to file does not excuse the sponsor from the requirement. If tax returns should have been filed, the affidavit will not be considered sufficient until the sponsor has done so and supplied the appropriate copies for consideration with Form I-864, *Affidavit of Support Under Section 213A of the Act*. If the declared income does not meet the 125 percent income requirement but the sponsor claims to have underreported his or her income, an amended return will be necessary for the affidavit to be considered sufficient. (**NOTE:** Consular officers do not have the authority to request and/or require an individual to pay taxes or correctly report income to the *Internal Revenue Service (IRS)*. Consular officers may advise applicants or sponsors that an original or amended tax return will be required in order to process an immigrant visa petition to conclusion, however.)

### **9 FAM 40.41 PN2.11 Part 4E—Determining Eligibility Based on Income**

(TL:VISA-230; 01-19-2001)

Line 1 establishes whether the sponsor is subject to the 125 percent income requirement or the 100 percent requirement for members of the U. S. Armed Forces. Line 2 should be the same as part 4C line 5. Line 3 establishes the income level needed to meet the income requirement and consular officers should check to ensure it complies with the most recent federal poverty guidelines.

### **9 FAM 40.41 PN2.12 Part 4F—Sponsor's Assets and Liabilities**

(TL:VISA-593; 11-05-2003)

If the sponsor's income does not meet the poverty guideline requirement for the household size based on income from wages or other sources, he or she may show evidence of assets owned by the sponsor, the sponsored immigrant(s) or members of the sponsor's household that are available for the support of the sponsored immigrant(s) and can readily be converted into cash within one year. Evidence of assets should be attached to Form I-864, *Affidavit of Support Under Section 213A of the Act*, establishing location, ownership and value of each asset listed. The evidence must include all liens and liabilities for each asset listed. The value of all assets listed must equal at least five times the difference between the minimum income requirement and the sponsor's total household income. [See 9 FAM 40.41 N5.2-1.]

### **9 FAM 40.41 PN2.13 Part 5--Applicant's Assets and Liabilities**

(TL:VISA-342; 01-08-2002)

If an applicant's assets are to be considered in meeting the minimum income requirement, they must be available in the United States for the support of the sponsored immigrant(s) and must be readily convertible to cash within one year. The applicant is not required to complete Form I-864A, *Contracts Between Sponsor and Household Member*, for assets. However, evidence establishing location, ownership and value of each asset listed, including all liens and liabilities for each asset listed, must be attached to Form I-864, *Affidavit of Support Section 213A of the Act*. The types of evidence that can be submitted are the same as those listed for the sponsor's assets.

## **9 FAM 40.41 PN2.14 Part 6—Joint Sponsors**

(TL:VISA-593; 11-05-2003)

A joint sponsor may only be used when the petitioner (or relative with a five percent ownership interest in the petitioning entity) cannot meet the income requirement or if a consular or *Department of Homeland Security (DHS)* officer requests it. The use of a joint sponsor does not relieve the petitioner of his or her full financial responsibility for the sponsored immigrant(s). There may be more than one joint sponsor, but each sponsor must individually meet the full 125 percent income requirement and must fully qualify as a sponsor. The assets of the sponsored immigrant(s) may be used to meet the income requirement, but only one sponsor may use them. All other sponsors must meet the income requirement without including the sponsored immigrant's assets.

## **9 FAM 40.41 PN2.15 Part 7—se of the Affidavit of Support to Overcome Public Charge Grounds**

### **9 FAM 40.41 PN2.15-1 Purpose of Form I-864, *Affidavit of Support Under Section 213A of the Act***

(TL:VISA-342; 01-08-2002)

This portion of the form constitutes the bulk of the contractual provisions, and outlines the purpose of Form I-864, *Affidavit of Support Under Section 213A of the Act*, which is to overcome the public charge grounds of ineligibility. It includes:

- (1) Notice of change of address requirements;
- (2) Means-tested benefit prohibitions and exceptions;
- (3) Consideration of the sponsor's income in determining eligibility for benefits; and
- (4) The civil action to enforce the affidavit.

The specifics with respect to each of these are spelled out in the Form.

### **9 FAM 40.41 PN2.15-2 Certification by the Sponsor**

(TL:VISA-230; 01-19-2001)

This part provides a certification under penalty of perjury that the sponsor is aware of the legal ramifications of being a sponsor under INA 213A.

### **9 FAM 40.41 PN2.15-3 Signing and Notarizing the Affidavit**

(TL:VISA-342; 01-08-2002)

For the affidavit to be considered satisfactory, the sponsor must personally sign the section in Part 7 entitled "Concluding Provisions" before a U.S. notary public, an *Department of Homeland Security* (DHS) officer or a consular officer. Form I-864, *Affidavit of Support Under Section 213A of the Act*, and his or her signature must be an original. The applicant may, however, submit photocopies for accompanying dependents, however, each copy must bear an original, notarized signature.

### **9 FAM 40.41 PN2.16 Part 8–Preparer Information**

(TL:VISA-230; 01-19-2001)

This is standard language if someone other than the sponsor prepared the form. Given its complexity, it is likely that most sponsors will seek assistance in completing this form.

### **9 FAM 40.41 PN3 When Alien Claims Form I-864, *Affidavit of Support Under Section 213A of the Act*, Is Not Required Based on 40 Quarters of Work**

(TL: VISA-593; 11-05-2003)

a. 9 FAM 40.41 N3.4-2 states that the consular officer must waive the Form I-864, *Affidavit of Support Under Section 213A of the Act*, requirement if the alien can demonstrate 40 quarters of work under the Social Security Act. Any individual seeking to demonstrate the number of quarters he or she has earned may request a certified earnings record from the Social Security Administration, which shows the number of qualifying quarters he or she has accrued.

b. In processing an immigrant visa (IV) for a beneficiary seeking to benefit from social security quarters, the consular officer must require a copy of the certified earnings statement, as well as a signed statement from the person who earned the quarters. The certification must contain the below language. (**Note:** If all the quarters being used were earned prior to December 31, 1996, the consular officer does not need to require the signed statement.)

I, (Full Name), certify under penalty of perjury under the laws of the United States that I did not receive any Federal means-tested benefit, such as temporary assistance for needy families, food stamps, medicaid, social security insurance, or state child insurance, during any of the quarters I am using to qualify that were earned after December 31, 1996.

c. *The consular officer must include a copy of the certified earnings record and, if applicable, the above signed statement in the immigrant visa package. Alternatively, the consular officer may document the Form I-864, Affidavit Of Support Under Section 213A of the Act, exemption by including a statement signed by the consular officer to the effect that pursuant to 9 FAM 40.41 N3.4-2 and a May 17, 2001 DHS/INS memorandum, no I-864 is required because 40 quarters of Social Security coverage have been established.*

d. *As stated in 9 FAM 40.41 PN1.2, the National Visa Center (NVC) performs a review of documents, including affidavits of support, for certain consular posts. In those instances where the petitioner or the sponsor notifies the NVC that they wish to use the social security quarters provision in lieu of an Form I-864, NVC requires submission of the certified earnings record and the signed statement described in 9 FAM 40.41PN3(b) before qualifying the case for forwarding to the post. If the petitioner and sponsor do not inform NVC that they intend to use the social security quarters provision, NVC will require the Form I-864 and supporting documents, including three years of tax returns and W-2s, and proof of employment.*

### ***9 FAM 40.41 PN4 Procedures for Posting Bond***

(TL:VISA-593; 11-05--2003)

See 9 FAM 40.41 N4.6-4.

#### ***9 FAM 40.41 PN4.1 Submission to Department***

(TL:VISA-593; 11-05--2003)

*In the rare cases where a consular officer is considering the use of a public charge bond (in cases where Form I-864, Affidavit of Support Under Section 231A of the Act, is required), the consular officer must consult with CA/VO/L/A for assistance, given the changing status of this area of the law.*

#### ***9 FAM 40.41 PN4.2 When Form I-864, Affidavit of Support Under Section 213A of the Act, is Not Required***

(TL:VISA-593; 11-05-2003)

a. *The minimum bond that may be accepted is \$1,000 for each alien. When a family unit is proceeding to the United States, a bond may be required for more than one member of the family. The consular officer should specify the names of the persons for whom the bond is being requested, as well as its amount.*



*b. When a bond is required for an immigrant visa applicant who is preceding family members, the number of the remaining family is ordinarily not to be taken into account. The question of public charge, as applied to the members of the family, should be examined at the time the family members apply for their visas. At that time the consular officer should consider, among other such factors the:*

*(1) Permanency of employment of the preceding immigrant;*

*(2) Degree of responsibility taken for the family's support during the period of separation; and*

*(3) Plans set forth in the affidavit of support for their maintenance after their immigration.*

*c. A public charge bond should be used only in marginal cases, since it is rarely sufficient by itself for INA 212(a)(4) purposes. A public charge bond is usually canceled when the alien dies, departs permanently from the United States, or is naturalized, provided the immigrant did not become a public charge prior to death, departure, or naturalization. However, a Department of Homeland Security (DHS) district director may cancel a bond at any time if the immigrant is found not likely to become a public charge. It will also be canceled upon review of the case following the fifth anniversary of the admission of the immigrant, provided the alien has filed Form I-356, Request for Cancellation of Public Charge Bond, and the district director finds that the immigrant did not become a public charge prior to the fifth anniversary. The bond, otherwise, will remain in effect, until Form I-356 is filed and the district director renders a decision to breach or cancel the bond after review of the evidence supporting the form.*

*d. An applicant on whose behalf a bond has been accepted should be informed that Department of Homeland Security (DHS) might require a larger bond upon arrival at a port of entry. A visa issued to such an alien should bear a notation regarding the filing of the bond. [See 9 FAM 42.73 PN2.3-2.] The official notification received from the Department of Homeland Security DHS regarding the posting of the bond should be attached to the visa. When the notification is received by telegram, a certified copy of the telegram should be so attached.*

## ***9 FAM 40.41 PN5 Evidence of Sponsor's Awareness of Obligations***

*(TL:VISA-593; 11-05-2003)*

*In cases involving the use of Form I-134, Affidavit of Support (not Form I-864, Affidavit of Support Under Section 213A of the Act) the Department shares the responsibility for ensuring that persons who undertake to sponsor the immigration of aliens are informed, prior thereto, that if the alien applies for public assistance, the sponsorship affidavit will be made available to the public assistance agency. Further, sponsors may be required to provide additional information concerning income and assets in connection with the alien's application for assistance. A form which posts are authorized to reproduce locally, designed to inform such sponsors of their responsibilities and obligations under the Social Security Act and the Food Stamp Act, must be included in all the "Instruction Package for Immigrant Visa Applicants" (formerly Packets 3) as an attachment to Form DS-2001, Notification of Application Readiness. Consular officers may not accept an affidavit of support for purposes of INA 212(a)(4) unless the designated form concerning social security insurance (SSI) benefits is signed by the sponsor(s) and attached to the affidavit.*