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Docket ID number USCIS-2007-0029

May 15, 2017

Ms. Samantha Deshommes  
Chief, Regulatory Coordination Division, Office of Policy and Strategy  
U.S. Citizenship and Immigration Services  
U.S. Department of Homeland Security  
20 Massachusetts Avenue, N.W.  
Washington, D.C. 20529-2140

RE: **Agency Information Collection Activities; Revision of a Currently Approved Collection:  
Affidavit of Support Under Section 213A of the Act, Form I-864; Contract Between  
Sponsor and Household Member, Form I-864A; EZ Affidavit of Support Under Section  
213 of the Act, I-864EZ; Intending Immigrant's Affidavit of Support Exemption, I-  
864W  
Docket ID USCIS-2007-0029  
OMB Control Number 1615-0075**

Dear Chief Deshommes:

The Catholic Legal Immigration Network, Inc. (CLINIC) respectfully submits the following comments related to proposed changes to Forms I-864, I-864A, I-864EZ and I-864W and the respective Instructions. CLINIC supports a national network of community-based legal immigration services programs. This network includes over 300 programs operating in 47 states, as well as Puerto Rico and the District of Columbia. Ninety percent of CLINIC's affiliates offer family-based immigration, naturalization and citizenship, and Deferred Action for Childhood Arrivals (DACA).

U.S. immigration policy reflects the importance of family reunification. Of the 990,553 foreign nationals admitted to the United States in FY2013 as lawful permanent residents (LPRs), 649,763, or 66 percent, were admitted on the basis of family ties.<sup>1</sup> Similarly, the sanctity of the family is a dominant element of Catholic social teaching and a high priority of the Catholic Church. Accordingly, CLINIC supports immigration policies and procedures that promote and facilitate family unity and welcome changes to forms and petition process that assist families access these important immigration benefits. To this end, CLINIC and our affiliated programs work to identify and address issues that families face when seeking to remain together or reunify in the U.S. CLINIC offers an extensive collection of family-based residency resources for service providers, including in-person and remote trainings, and topic-specific materials.

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<sup>1</sup> U.S. Congressional Research Service. U.S. Family-based Immigration Policy (R43145; Nov. 19, 2014), by William A. Kande. <https://fas.org/sgp/crs/homesec/R43145.pdf> (last accessed Dec. 11, 2015).

## I. General Comments

We appreciate the opportunity to provide feedback on the proposed changes to the Affidavit of Support Forms and Instructions.

## II. Specific Feedback on Form I-864

### 1. Information about Immigrants being Sponsored

#### ➤ Page 2, Part 3, Question 1

**Discussion:** The “yes” or “no” options do not take into consideration the common situation where a petitioning sponsor has immigrated the principal beneficiary and is now filing an affidavit of support on behalf of the derivatives who are applying to immigrate more than six months after the principal beneficiary (“follow to join”). The options are either that the petitioning sponsor is filing the affidavit of support on behalf of the principal beneficiary (named in Part 2) or that the person filing the I-864 is the second of two joint sponsors. This has been a problem with the form since the final regulation introduced the concept of two potential joint sponsors in 2006.

**Recommendation:** Add the following language within the parenthetical: (Applicable only if you are sponsoring family members in **Part 3**, as the second joint sponsor *or if you are sponsoring family members who are immigrating more than six months after the principal immigrant*).

### 2. Information about Immigrants being Sponsored

#### ➤ Page 2, Part 3, New Question #3

**Discussion:** If you are following the recommendation above and changing the I-864 to allow for a petitioning sponsor to file an affidavit of support for the following to join derivatives without having to jerry rig the form, which is currently the case, then you will need to add a third box after the current #2.

**Recommendation:** A third box would state: *I am sponsoring the following family members who are immigrating more than six months after the principal immigrant.*

### 3. Information about Immigrants being Sponsored

#### ➤ Page 2, Part 3, Questions 4, 9, 14, 19, and 24

**Discussion:** The question asks “Relationship to Sponsored Immigrant.” The petitioning sponsor or joint sponsor is filing the affidavit of support on behalf of the principal immigrant and any derivative family members immigrating within six months of the principal immigrant. All of the family members listed in Part 3 are *sponsored* immigrants. The question should be what is their relationship to the *principal* immigrant.

**Recommendation:** Change “Relationship to Sponsored Immigrant” to *Relationship to Principal Immigrant*.

#### **4. Information about Immigrants being Sponsored**

➤ *Page 3, Part 3, Question 28*

**Discussion:** If the petitioning sponsor is filing the affidavit of support on behalf of the derivative family members who are immigrating more than six months after the principal immigrant, then by definition, that means that the principal beneficiary has already immigrated. Although the principal immigrant will need to be listed in Part 2, that person will not be counted in this section. Instead, that person will be counted in Part 5 #6 as a household member on whose behalf an I-864 or I-864EZ was filed previously and who is now an LPR.

**Recommendation:** Add the following language after the words “Additional Information”: *Do not count the principal immigrant if you are only sponsoring family members entering more than six months after the principal immigrant.*

#### **5. Use of Assets**

➤ *Page 5, Part 6, Questions 6-8*

**Discussion:** In this section the sponsor may count the assets of the intending immigrant. In most cases, that will be the principal beneficiary identified in Part 2. But there are situations where the affidavit is being filed on behalf of derivative family members of the principal immigrant more than six months after the principal beneficiary has immigrated. In those situations, the sponsor would not be able to use the assets of the principal beneficiary. The language needs to be amended in the words preceding questions 6-8 as well as within the questions.

**Recommendation:** Strike the words “principal sponsored immigrant” and replace it with *principal immigrant* in the heading preceding questions 6-8. Add the following after the words “The principal immigrant is the person listed in **Part 2, Item Numbers 1.a – 1.c.**”: *Only include the assets if the principal immigrant is being sponsored by this affidavit of support.* Within questions 6-8, strike the words “sponsored immigrant’s” and replace them with *principal immigrant’s*.

### **III. Specific Feedback on Form I-864 Instructions**

#### **1. General Instructions; Biometric Services Appointment**

➤ *Page 2, General Instructions, Biometric Services Appointment*

**Discussion:** In the current Instructions, the sponsor is informed on page 14 that the USCIS may request that they appear for an interview as well as provide fingerprints, photograph, and/or a signature “to verify your identity and/or update background and security checks.” The proposed Instructions would move that language to the second page and thus make it more prominent. It

would also add the following additional purpose of biometrics: “a check of criminal history records maintained by the Federal Bureau of Investigation (FBI), before making a decision on your application, petition, or request.” First, the affidavit of support is not an “application, petition, or request.” By calling it something it is not, the USCIS is implying that this is simply boilerplate language meant to cover various forms and situations. Second, during the last twenty years of enforcement of the affidavit of support, the sponsor has been required to appear in only a miniscule number of cases. Therefore CLINIC believes that it is not necessary to make this more prominent than it already is. We believe it would have the effect of intimidating joint sponsors and discouraging them from participating in the process. Third, CLINIC does not understand why a sponsor’s criminal background would be relevant in determining the sufficiency of the affidavit of support and whether the sponsor has demonstrated sufficient income to maintain the intending immigrants.

**Recommendation:** Move this section back to where it is also covered in Page 15 under Processing Information. Strike the words “including “a check of criminal history records maintained by the Federal Bureau of Investigation (FBI), before making a decision on your application, petition, or request.”

## **2. General Instructions; Copies**

➤ *Page 3, Note*

**Discussion:** The proposed language would add the following language: “If you submit original documents when not required or requested by USCIS, **your original documents may be immediately destroyed upon receipt.**” (emphasis in the original) CLINIC questions the need for the agency to “immediately destroy” original documents that are inadvertently submitted in lieu of copies. Such action seems unnecessarily punitive.

**Recommendation:** We encourage the USCIS to strike the proposed language and retain the current language and warning against submission of original documents: *If you submit original documents when not required, the documents may retain a part of the record, and USCIS will not automatically return them to you.*

## **3. Specific Instructions; Current Annual Household Income**

➤ *Page 8, Part 6, Items Numbers 8-12*

**Discussion:** In the paragraph numbered 2 it states “If you included the income of the intending immigrant who is your spouse...the intending immigrant must provide evidence that he or she is living in your residence.” This is in error. If the intending immigrant is the spouse, that person does not need to be residing with the sponsor in order to count their income. See 8 CFR § 213a(c)(2)(i)(C)(5). In other sections of the Instructions, it is stated correctly, that the intending immigrant spouse does not need to reside with the sponsor in order to count his or her income. See page 12, What if I Cannot Meet the Income Requirements? and Can the Intending Immigrant Help Me Meet the Income Requirements?

**Recommendation:** Strike the words: “and the intending immigrant must provide evidence that he or she is living in your residence.”

#### 4. Specific Instructions; Federal Income Tax Return Information

➤ *Page 9, Item Numbers 23.a – 25. Federal Income Tax Return Information*

**Discussion:** The third paragraph on page 9 begins with the sentence: “To rely on income for any given year, you must submit an IRS transcript or copy of your Federal individual income tax return for that year.” This is both confusing and inaccurate. The test of whether the sponsor has the means to maintain the intending immigrant(s) at 125 percent of the poverty line is determined by his or her current individual annual income. See Instructions at Part 6, Item Number 7, page 8. It states to enter “your expected income for the current year.” This means that the sponsor must calculate how much money he or she is anticipating earning for the calendar year “in which the intending immigrant filed the application for an immigrant visa or adjustment of status.” See 8 CFR §213a.2(c)(2)(ii)(A), (C). The income reported on prior tax returns is helpful and instructive, since it may show financial stability. The income reported on prior years’ tax returns is particularly relevant if the current estimated income is *more* than what was reported on last year’s federal income tax return. In that case, and especially if the income reported on last year’s tax return is less than the 125 percent of poverty requirement, the sponsor should back up the estimate of current income with an employer’s letter, pay stubs, and tax returns from the prior three years (not just the prior tax year). If the current income and the income reported on last year’s income tax return are both above the 125 percent of poverty level, the sponsor has satisfied the financial requirement and should not need to include additional supporting documentation. The sponsor is required to include a tax return for the prior tax year, assuming he or she had a tax liability. See page 13, “The petitioning sponsor must also provide his or her federal income tax return for the most recent tax year with supporting tax documents unless otherwise not required to file a Federal income tax return for the most recent tax year.” Therefore to state that the sponsor must submit a tax return for the *current* year he or she is estimating and relying on income is inconsistent and impossible, since federal tax returns are filed the year *after* the current calendar year ends. And to imply that the sponsor would be relying on income reported on a prior calendar year runs counter to the regulations, the I-864, and the instructions on how to measure current individual annual income.

**Recommendation:** Strike the sentence: “To rely on income for any given year, you must submit an IRS transcript or copy of your Federal individual income tax return for that year.”

#### 5. Specific Instructions, Part 7, Use of Assets

➤ *Page 10, Part 7, Item Number 10, Total Value of Assets*

**Discussion:** In this paragraph it states “if you are a U.S. citizen and you are sponsoring your spouse or minor child, the total value of your assets must only be equal to at least three times the difference.” This is in error. The sponsor’s assets must be three times the shortfall in income if he or she is a U.S. citizen and petitioning a spouse or *child age 18 years or older*. See 8 CFR § 213a.2(c)(iii)(B)(1).

**Recommendation:** Change the words “spouse or minor child” to *spouse or child 18 years or older*.

#### **IV. Specific Feedback on Form I-864A**

##### **1. Your Federal Income Tax Information and Assets**

➤ *Page 2, Part 4, Question 1.a and 1.b*

**Discussion:** CLINIC commends the USCIS for making the proposed changes regarding Questions #1.a and 1.b so that the sponsor can correctly indicate whether he or she has filed income tax returns for the prior three years and then can also state whether he or she is electing to attach copies of the second and third most recent tax year. However, the USCIS has failed to propose deleting the box and optional election language that comes after Questions #2.c. As proposed, this language appears twice.

**Recommendation:** Delete the second box and paragraph beginning with “(Optional)” after Part 4 #2.c. because it is stated already after #1.b.

##### **2. Part 5, Sponsor’s Promise**

➤ *Page 4, Part 5, Question 27*

**Discussion:** CLINIC commends the USCIS for improving the language.

##### **3. Part 6, Your Household Member’s Statement**

➤ *Page 5, Part 6, Question 1.b. and 2.*

**Discussion:** CLINIC commends the USCIS for improving the language.

#### **V. Specific Feedback on Form I-864A Instructions**

##### **1. Who May Be Considered a Household Member for Purposes of Form I-864A?**

➤ *Page 1*

**Discussion:** CLINIC commends the USCIS for deleting the language indicating that the household member must be a U.S. citizen, LPR, or U.S. national. The language in the current Instructions is wrong. See 8 CFR § 213a.2(c)(2)(i)(C)(1). There is no statutory or regulatory requirement that the household member has to have any U.S. citizenship or lawful immigration status, and the proposed language remedies that error.

##### **2. General Instructions, Signature**

➤ *Page 2, General Instructions, Signature*

**Discussion:** The proposed language is: “If you are filing this contract electronically when authorized, USCIS will accept your signature in an electronic format.” CLINIC commends the USCIS for not requiring a “wet” signature. This conforms with the State Department’s current practice.

### **3. General Instructions; Biometric Services Appointment**

➤ *Page 2, General Instructions, Biometric Services Appointment*

**Discussion:** The current Instructions do not contain any advisal that the household member may be required to attend an interview or submit to fingerprints. Nor does it contain language that the household member may be subjected to “a check of criminal history records maintained by the Federal Bureau of Investigation (FBI), before making a decision on your application, petition, or request.” As already stated above in reference to the Instructions for the I-864, the affidavit of support is not an “application, petition, or request.” By calling it something it is not, the USCIS is implying that this is simply boilerplate language meant to cover various forms and situations. Second, during the last twenty years of enforcement of the affidavit of support, the household member have almost never been required to appear in person at an adjustment of status or immigrant visa interview. Therefore, CLINIC believes that it is not necessary to add this language. We believe it would have the effect of intimidating potential household members and discouraging them from participating in the process. Third, CLINIC does not understand why a household member’s criminal background would be relevant in determining the sufficiency of the affidavit of support and whether the sponsor has demonstrated sufficient income to maintain the intending immigrants.

**Recommendation:** Delete this entire section.

### **4. General Instructions; Copies**

➤ *Page 3, Note*

**Discussion:** The proposed language would add the following language: “If you submit original documents when not required or requested by USCIS, **your original documents may be immediately destroyed upon receipt.**” CLINIC questions the need for the agency to “immediately destroy” original documents that are inadvertently submitted in lieu of copies. Such action seems unnecessarily punitive.

**Recommendation:** We encourage the USCIS to strike the proposed language and retain the current language and warning against submission of original documents: *If you submit original documents when not required, the documents may remain a part of the record, and USCIS will not automatically return them to you.*

### **5. Specific Instructions; Federal Income Tax Information and Assets**

➤ *Page 5, Part 4, Your Federal Income Tax Return Information and Assets*

**Discussion:** The sixth paragraph on page 5 begins with the sentence: “To rely on income for any given year, you must submit an IRS transcript or copy of your Federal individual income tax return for that year.” This is confusing, inaccurate, and impossible. Please see discussion of this same issue above regarding the Instructions for the I-864.

**Recommendation:** Delete this sentence.

## **6. Specific Instructions; Current Information, Declaration, and Signature**

➤ *Page 7, Part 8, Item Numbers 1.a – 8.b.*

**Discussion:** The proposed language states that “If the person who helped you prepare your contract is an attorney or accredited representative, he or she must also submit a completed G-28...” However, the sentence fails to state that this only applies if the representation will extend beyond the preparation of the contract. This is now standard language in almost all petitions and applications.

**Recommendation:** Add the following language at the end of the last sentence in that paragraph: *if his or her representation extends beyond preparation of this contract.*

## **7. Address Change and Penalties**

➤ *Page 8-9, Address Change and Penalties*

**Discussion:** In the first paragraph it states “A sponsor who is not a U.S. citizen must inform the USCIS of his or her new address within 10 days of moving...” It goes on to state that the person must complete a Form I-865. On Page 9, second and third paragraphs, it states what the civil penalty is for sponsors who fail to provide a change of address form. But the I-864A is used by household members, not sponsors. This requirement is limited to sponsors and is stated plainly in the statutory and regulatory provisions cited in this section: 8 USC § 1183a(d) and 8 CFR § 213a.3. Household members are very distinct from sponsors in terms of the eligibility and liability requirements. They are not subject to address change reporting requirements.

**Recommendation:** Strike all language pertaining to change of address requirements and penalties.

# **VI. Specific Feedback on Form I-864EZ Instructions**

## **1. General Instructions, Biometric Services Appointment**

➤ *Page 3, Biometric Services Appointment*

**Discussion:** See discussion and recommendation above with the Instructions for the I-864 regarding the insertion of this language.

## **2. General Instructions, Copies**



➤ *Page 3, Copies, Note*

**Discussion:** See discussion and recommendation above with the Instructions for the I-864 regarding the insertion of this language.

## **VII. Specific Feedback on Form I-864W Instructions**

### **1. General Instructions, Biometric Services Appointment**

➤ *Page 3, Biometric Services Appointment*

**Discussion:** See discussion above with the Instructions for the I-864 regarding the insertion of this language. This language is particularly inappropriate for the person completing and signing the I-864W. This form is completed by persons who are not required to complete an I-864 because they are: (1) a person who has earned or can be credited with 40 qualifying quarters of Social Security coverage; (2) a child who will be deriving citizenship upon being granted LPR status; (3) a widow(er); or (4) a victim of domestic violence. These persons are already required to appear for an interview on their application for adjustment of status or an immigrant visa and are already required to submit biometrics. This language warning them that by submitting an I-864W they are potentially subjecting themselves to an interview and biometrics is both superfluous and confusing.

**Recommendation:** Delete this paragraph.

### **2. Address Change and Penalties**

➤ *Page 5-6, Address Change and Penalties*

**Discussion:** In the first paragraph under Address Change on page 5 it states “A sponsor who is not a U.S. citizen must inform the USCIS of his or her new address within 10 days of moving...” It goes on to state that the person must complete a Form I-865. On Page 6 under Penalties, in the third and fourth paragraphs, it states what the civil penalty is for sponsors who fail to provide a change of address form. But the I-864W is used by intending immigrants who are exempted from filing an affidavit of support. These people are not sponsors. The citation to that statutory and regulatory provisions 8 USC § 1183a(d) and 8 CFR § 213a.3 are clearly inapplicable. Intending immigrants are very distinct from sponsors and do not have change of address reporting requirements.

**Recommendation:** Strike all language pertaining to change of address requirements and penalties.

### **Conclusion**

Thank you for your consideration of these comments. We appreciate and encourage continued dialogue and engagement with USCIS on this issue, particularly as USCIS implements the new

versions of the forms. Please do not hesitate to contact me at 301-565-4829 or [jatkinson@cliniclegal.org](mailto:jatkinson@cliniclegal.org), with any questions or concerns about our recommendations.

Sincerely,

A handwritten signature in black ink, reading "Jeanne M. Atkinson". The signature is written in a cursive style with a large, stylized "J" and "A".

Jeanne M. Atkinson  
Executive Director