

ImmiCore Law

A Professional Law Corporation

MEMORANDUM

Re: Responsibilities in signing Affidavit of Support

Dear Affidavit of Support Sponsor:

This Memorandum is intended to give you an understanding of the responsibilities that you will be undertaking as an Affidavit of Support Sponsor in a petition for which you are also the Petitioner.

Disclaimer: This is a standard Memorandum that our law firm provides to co-sponsors and is intended as general information. Nothing in this Memorandum states or suggests that the Mathews & Peddibhotla Law Group is giving you specific legal advice. You may seek independent legal counsel with regard to your responsibilities as an Affidavit of Support.

Nothing in this letter or any of our prior, current, or future communications arising out of this matter constitutes an Attorney-Client relationship.

I. Potential Responsibility for those Signing Form I-864 and Disclaimer of Representation

In order for a foreigner to immigrate through a family-based petition (such as a CR or an IR visa, or stateside adjustment of status "green card"), the U.S. citizen petitioner must execute and submit a legally enforceable affidavit of support on Form I-864. The sponsor must agree in this affidavit to "provide support to maintain the sponsored alien at an annual income that is not less than 125 percent of the Federal poverty line during the period in which the affidavit is enforceable." The affidavit of support must be "legally enforceable against the sponsor by the sponsored alien." Jurisdiction to enforce the affidavit of support lies in "any appropriate court" in actions brought by the sponsored alien against the sponsor "with respect to financial support." The possible remedies include payment of spousal support or other maintenance.

The affidavit remains in effect until the foreigner either becomes a U.S. citizen or earns/is credited with 40 qualifying quarters of employment, as defined under social security law.

The regulations also allow for termination of the affidavit in the event that either the U.S. citizen sponsor or the foreigner dies, or the foreigner abandons lawful permanent resident (LPR) status and leaves the United States.

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Page 2 of 2

The I-864 affidavit does not terminate upon the dissolution of the marriage between the sponsor and the sponsored alien. In fact, divorce eliminates the ability of the parties to combine social security quarters earned during marriage and terminate the contract in that manner. In those situations, the sponsor remains liable for maintaining the ex-spouse until the alien either 1) dies; 2) naturalizes; or 3) works ten years and satisfies the 40-qualifying quarter requirement. It can be argued, therefore, that Congress has created a disincentive for foreign spouses to naturalize or work after divorcing the citizen/LPR spouse, since doing so would eliminate or restrict their ability to receive guaranteed maintenance from the sponsor at a level not less than 125 percent of the federal poverty income guidelines.

The second paragraph of the instructions to form I-864 advises the sponsor that by executing the form he or she is agreeing "to support the intending immigrant and any spouse and/or children immigrating with him or her" until the contract terminates. "Divorce does not terminate the obligation." Part 7 of the form states: "The sponsor must provide the sponsored immigrant(s) whatever support is necessary to maintain them at an income that is at least 125 percent of the Federal poverty income guidelines." When sponsors sign the I-864, they are agreeing to provide the sponsored immigrant with that level of support until the contract terminates, acknowledging their understanding of when the contract terminates, admitting that the sponsored immigrant may sue to enforce the contract, and conceding to the personal jurisdiction of any court in the United States to enforce the contract.