

SUPPORTING STATEMENT

**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, (Form I-864EZ), and
Intending Immigrant's Affidavit of Support Exemption, (Form I-864W)**

OMB No. 1615-0075

A. JUSTIFICATION:

1. Section 213A of the Immigration and Nationality Act (Act) requires most family-based and certain employment-based immigrants to have the petitioning relative execute an Affidavit of Support on their behalf. The Affidavit of Support sponsor must maintain a household income of at least 125 percent of the Federal poverty guidelines. The Affidavit of Support is a legally binding document which may be enforced in Federal or State court, if the sponsored alien receives any means-tested public benefits. The information collection required on Form I-864 (or Form I-864EZ, if the applicant qualifies to use it) is necessary for adjudicator and consular officers to determine whether the sponsor can meet the minimum income requirements. In addition, the execution of the Affidavit of Support creates a contract between the sponsor and the sponsored alien and any entity that provides means-tested public benefits to the sponsored alien. The execution of the Contract Between Sponsor and Household Member creates a similar contract that also includes the household member. The Department of Homeland Security (DHS), U.S Citizenship and Immigration Services (USCIS) must maintain Forms I-864, I-864EZ and I-864A in the event the obligation must be enforced by civil action. In addition, Form I-864EZ was created to be a quicker and easier form for certain sponsors to comply with the section 213A requirements. This form will be much easier for those who qualify for its use, and much easier for the DHS to adjudicate. Finally, the DHS Form I-864W, is a simple, one page form used for intending immigrants who are exempt from the section 213A requirements in

which they can clearly identify the reason for the exemption for the adjudicator.

2. **Form I-864.** The data collected on Form I-864 will be used by the USCIS to determine whether the sponsor has the ability to support the sponsored alien under section 213A of the Immigration and Nationality Act. This form serves the purpose of standardizing the evaluations of the sponsor's ability to support the sponsored alien and ensures that basic information required to assess eligibility is provided by petitioners.

Form I-864A. The Form I-864A is a contract between the sponsor and the sponsor's household members. It is only required if the sponsor used income of his or her household members to reach the required 125 percent of the Federal poverty guideline. The contract holds these household members jointly and severally liable for the support of the sponsored immigrant. The information collection required on Form I-864A is necessary for public benefit agencies to enforce the Affidavit of Support in the event the sponsor used income of his or her household members to reach the required income level and the public benefit agencies are requesting reimbursement from the sponsor.

Form I-864EZ. The Form I-864EZ will be used by the USCIS in exactly the same way as Form I-864, however, the USCIS will collect less information from the sponsors as less information will be needed from those who qualify in order to make a thorough adjudication.

Form I-864W. The Form I-864W is a form that will be used by the USCIS to determine whether the intending immigrant meets the criteria for exemption of section 213A requirements. This form collects the immigrant's basic information, such as name and address, the reason for the exemption, and accompanying documentation in support of the immigrant's claim that they are not subject to section 213A.

3. The use of Forms I-864, I-864EZ, I-864A, and I-864W provide the most efficient means for collecting and processing the required data. These forms can be completed electronically but cannot be e-filed. However, these forms have been designated for e-filing under the Business

Transformation Project.

4. A review of the Forms Inventory Report revealed no duplication of effort, and there is no other similar information currently available which can be used for this specific purpose.
5. This collection of information does not have an impact on small businesses or other small entities.
6. If the information is not collected, compliance with section 213A of the Act would not be met. Without Form I-864, and Form I-864EZ, USCIS will not be able to determine whether the sponsor could meet the 125 percent threshold of the Federal poverty guidelines. Without Form I-864A, the Contract Between Sponsor and Household Member, the affidavit would not be enforceable against the sponsor's household members when their income is used to assist the sponsor in meeting the required income level. Without Form I-864W, intending immigrants who were exempt from section 213A requirements would have no way of clearly establishing those facts to an adjudicator.
7. The special circumstances contained in item 7 of the supporting statement are not applicable to this information collection.
8. On May 12, 2010, USCIS published a 60-day notice in the Federal Register at 75 FR 26782. On August 18, 2010, USCIS published a 30-day notice in the Federal Register at 75 FR 51093 . USCIS received several comments from two commenters. The following is a discussion of the comments and USCIS' response.

Comment: Based on the Act the income tax return is required only for one year. However, the Form I-864 Part 6, item 25, indicates 3 years. Therefore, both Forms I-864 and I-864A must be changed to reflect 1 year and not 3 years.

Comment: The commenter inquired about the National Visa Center's (NVC) authority to require copies of the petitioner's income tax return for the 3 most recent years. The commenter expressed concern regarding the requirement that a petitioner provide a copy of the most recent

income tax return, however, the Department of State through the NVC requires that the petitioner provides copies of the last 3 years.

Response: Question 25 on the Form I-864 does not conflict with the statute. Section 213A(f)(A) (i) of the Act requires a sponsor to provide certified copies of the sponsor's individual Federal income tax returns "for the individual's 3 most recent taxable years." Section 213A(f)(B), however, gives the Secretary of State and the Secretary of Homeland Security discretion to allow the individual to provide a copy only of the most recent tax return. Therefore, the statute does permit State Department and USCIS to accept the filing of a sponsor's previous year's income tax returns. The June 27, 2006 USCIS memo entitled "Consolidation of Policy of USCIS Form I-864, Affidavit of Support" and State Department's Foreign Affairs Manual (9 FAM Chapter 40.41 notes) incorporates this change into policy.

Item 25 of part 6 of the I-864 requires the sponsor to check a box indicating that he or she has either (1) filed a tax return for each of the three most recent tax years and is attaching a photocopy or transcript of the most recent return, or (2) is voluntarily attaching photocopies of the tax returns for the second and third most recent tax years.

For an affidavit of support to be deemed sufficient, the sponsor must demonstrate an ability to maintain income. The question requiring information on the sponsor's tax returns for the last three years can be used as evidence regarding the sponsor's ability to maintain that income over time.

Both USCIS and State Department policy states that an officer may request additional information if the evidence submitted does not demonstrate the sponsor's ability to maintain that income.

Comment: The commenter expressed concern that the existing forms do not have a section for notarization. The commenter questions if this means that there is no requirement for forms to be notarized and also discusses that if there is a legal requirement for this, a specific section should be designated allowing notarization. The commenter also highlighted that the NVC and U.S.

Consulates/Embassies overseas insist that these forms be notarized.

Response: The final rule adopting the regulations for the administration of section 213A of the Act, published in the Federal Register on June 21, 2006, at 71 FR 35732, 35739, clearly states that there is no need to notarize the sponsor’s signature on a Form I-864. The Form I-864 is signed “under penalty of perjury,” and therefore 28 U.S.C. 1746 makes notarization unnecessary.

Another commenter expressed concern about the use of the Form I-864 in relation to the full extension of the Act to the Commonwealth of the Northern Mariana Islands (CNMI), pursuant to title VII of the Consolidated Natural Resources Act of 2008, Public Law 111-220. This commenter contends that Congress did not have authority to extend the Act to the CNMI.

Response: This issue is beyond the scope of the notice concerning the Form I-864 and USCIS will not further discuss.

9. The USCIS does not provide payments or gifts to respondents in exchange for a benefit sought.
10. There is no assurance of confidentiality.
11. There are no questions of a sensitive nature.
12. **Annual Burden Hours:**

Total annual reporting burden is 3,265,650.

	I-864	I-864A	I-864EZ	I-864W
No. of respondents	439,500	215,800	100,000	1,000
Responses per respondent	I-864	I-864A	I-864EZ	I-864W
Hours per response	6	1.75	2.5	1
Learning about law and form	75	20	30	15
Annual Reporting Burden	2,637,000	377,650	250,000	1,000
Completion of Form	90	55	40	15
Form Total Burden Hours	2,637,000	377,650	250,000	1,000
Assembling and Filing Form	195	30	80	30
Total Public Cost		\$32,656,500		
Total	360 (6 hrs.)	105 (1.75 hrs.)	150 (2.5 hrs.)	60 (1 hr.)

The projected hours per response for these collections were derived by breaking the process into three basic components:

I-864 Reporting Burden.

Total Annual Reporting Burden Hours for the Form I-864 is 2,637,000 hours. This figure was derived by multiplying the number of principal respondents (439,500) x (1) the frequency of response x (6) the hours per response .

I-864A Reporting Burden.

The Total Annual Reporting Burden Hours for the Form I-864A is 377,650 hours. The total reporting burden was derived by multiplying the number of respondents (215,800) x (1) the number of responses per respondent x (1.75) the hours per response.

I-864EZ Reporting Burden.

Total Annual Reporting Burden Hours for the Form I-864EZ is 250,000 hours. This figure was derived by multiplying the number of respondents (100,000) x (1) the frequency of response x (2.5) the hours per response.

I-864W Reporting Burden.

Total Annual Reporting Burden Hours for the Form I-864W is 1,000 hours. This figure was derived by multiplying the number of estimated respondents (1,000) x (1) the frequency of response x (1) the hours per response.

13. There are no capital or start-up costs associated with this information collection. Any cost burden to respondents as a result of this collection are identified in item 14. There are no fee charges.

14. **Annualized Cost Analysis:** **I-864, I-864A, I-864EZ, I-864W**

Printing Cost	\$ 687,200
Collecting and Processing	\$ 30,252,000
Total Cost to Program	\$ 30,939,200
Fee Charge	0
Total Annual Cost to Government	\$ 30,939,200

Government Cost

The estimated cost to the Government for Forms I-864, I-864A, I-864EZ, and I-864W is

\$30,939,200. This figure is calculated by multiplying the estimated total number of respondents filing all four forms (756,300) x (1) number of response x (1) hour government response time to process the request x \$40 (suggested average hourly rate for clerical, officer, and supervisory time with benefits). This figure also includes the estimated overhead cost for printing, stocking, and distributing the forms which is \$687,200. The overhead cost for printing, stocking, and distributing the form.

Public Cost

The estimated annual public cost of this information collection is \$97,610,278. This figure is based on:

- The number of Form I-864 respondents (439,500) x (1) number of responses x (6) hours per response x \$29.89 the average hourly rate; plus
- The number of Form I-864A respondents (215,800) x (1) number of responses x 1.75 hours per response x \$29.89 the average hourly rate; plus
- The number of Form I-864EZ respondents (100,000) x (1) number of responses x 2.5 hour per response x \$29.89 the average hourly rate; plus
- The number of Form I-864W respondents (1,000) x (1) number of responses x 1 hour per response x \$29.89 the average hourly rate.

15. There has been no increase or decrease in the burden hours. There has been no increase or decrease in the total public cost.
16. USCIS does not intend to employ the use of statistics or the publication thereof for this collection of information.
17. USCIS will display the expiration date for OMB approval of these information collections.
18. USCIS does not request an exception to the certification of this information collection.

B. Collection of Information Employing Statistical Methods.

Not Applicable.

C. Certification and Signature.

PAPERWORK CERTIFICATION

In submitting this request for OMB approval, I certify that the requirements of the Privacy Act and OMB directives have been complied with including paperwork regulations, statistical standards or directives, and any other information policy directives promulgated under 5 CFR 1320.

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Date

Chief,

Regulatory Products Division,

U.S. Citizenship and Immigration Services,

Department of Homeland Security.