

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 4, 2011, USCIS published a 60-day notice in the Federal Register at 76 FR 25364.

USCIS received comments from one commenter. The following is a discussion of the comments and USCIS' response:

Comment: One commenter believes that Form I-864 should be revised so that a sponsored alien would not be able to sue for support after termination of the sponsored alien's marriage to the sponsor. According to the commenter, issues such as alimony are issues that should be decided by the court with jurisdiction to dissolve the marriage. The commenter believes that the affidavit of support requirement was not intended to apply to the private relationship between the sponsor and the sponsored immigrant.

Response: The text of the statute specifically provides, in section 213A(a)(1)(B), that the sponsored alien is legally entitled to sue the sponsor to enforce the Form I-864. This right exists as a matter of Federal law, regardless of whatever rights the sponsored alien may have under State law concerning dissolution of marriage and spousal support. As the Department noted in adopted the final Form I-864 rule, divorce *does not* end the sponsor's obligations. 71 FR 35732, 35740 (2006).

Comment: One commenter believes that the sponsor and sponsored alien should be able to agree, at the time the Form I-864 is signed and submitted, that the sponsored alien will give up the right to enforce the Form I-864.

Response: As noted in the final rule, 71 FR at 35740, a sponsor and the sponsored alien could potentially make such an agreement, *as part of a divorce settlement*. But making such an agreement from the outset would call seriously into question to very validity of the Form I-864. In addition, making such an agreement, without disclosing it in the immigration proceeding could well constitute, for the sponsor, the making of a false statement in a Federal proceeding, or, for the sponsored alien, the concealment or misrepresentation of a material fact.

Comment: One commenter believes the Form I-864 should reflect principals, such as mitigation of damages or the sponsored alien's own duty to support himself or herself, which could lessen the sponsor's liability.

Response: As the Department noted in the final rule, 71 FR at 35742-43, these are issues to be decided by a court with jurisdiction of a civil action seeking enforcement of the Form I-864.

9. The USCIS does not provide payments or gifts to respondents in exchange for a benefit sought.
10. There is no assurance of confidentiality. The system of record notice associated with this information collection is United States Citizenship and Immigration Services Benefits Information System. Published in the Federal Register on September 29, 2008 at 73 FR 56596. The associated privacy impact assessment is USCIS Benefits Processing of applications other

than Petitions for naturalization, Refugee Status, and Asylum.

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	1	1	1	1
Hours per response	6	1.75	2.5	1
Annual Reporting Burden	2,637,000	377,650	250,000	1,000
Form Total Burden Hours	2,637,000	377,650	250,000	1,000
Total Public Cost	\$32,656,500			

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

	I-864	I-864A	I-864EZ	I-864W
Learning about law and form	75	20	30	15
Completion of Form	90	55	40	15
Assembling and Filing Form	195	30	80	30
Total	360 (6 hrs.)	105 (1.75 hrs.)	150 (2.5 hrs.)	60 (1 hr.)

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.	<u>Annualized Cost Analysis:</u>	<u>I-864, I-864A, I-864EZ, I-864W</u>
	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. There is no change in the information being collected.
16. USCIS does not intend to employ the use of statistics or the publication thereof for this collection of information.
17. Based on 5 CFR 1320.5(a)(1)(iii)(C), USCIS is seeking an exception from OMB to display an expiration date for this information collection. OMB reviews USCIS' immigration forms annually because they cannot be electronically-filed. USCIS has been including the expiration date of the annual approval on the forms, although the information being requested from the public does not usually change from year to year. USCIS' current practice has been that once OMB approves the annual extension for use of the form, the existing forms inventory is destroyed and additional forms and instructions with the new expiration date are printed and distributed. The current process has caused our customers great confusion because often times the form they have on hand may have a stale expiration date. Even though the form and instructions did not

change, they do not want to use the expired form in fear that their application will be rejected due to the stale expiration date. USCIS is proposing removing the expiration date from this form in an effort to avoid confusion for our customers and to save the costs associated with destroying and printing forms unnecessarily.

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.

Sunday Aigbe

Chief,

Regulatory Products Division,

Office of the Executive Secretariat,

U.S. Citizenship and Immigration Services,

Department of Homeland Security.

Date