

## UNDERSTANDING THE AFFIDAVIT OF SUPPORT REQUIREMENT IN GREEN CARD CASES



by

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Changes to the U.S. immigration laws in the late 1990s introduced the concept of the Affidavit of Support. The Affidavit of Support is an immigration form that is required to be submitted in most family-based and some employment-based applications for permanent residence. Without a properly executed Affidavit of Support in cases where it is required, the application for a green card cannot be approved. This article will address some of the most frequently asked questions regarding the Affidavit of Support requirement.

### **What is an Affidavit of Support?**

An Affidavit of Support is an immigration form (Form I-864) that is required to be submitted in most family-based green card cases and some employment-based green card cases. The Affidavit of Support form is required to be submitted by the sponsor in order to prove to the immigration officials that the sponsor has the ability to maintain an income at a required level set by the United States government. The United States government requires the sponsor to sign an Affidavit of Support because it wants to be sure that the sponsored immigrant will have enough financial support while in the United States and will not have to get financial assistance from the United States government.

### **What types of cases require an Affidavit of Support?**

Almost all family-based green card cases require that an Affidavit of Support be filed along with the Form I-485 (green card application). This includes all marriage-based green card cases.

The only employment-based green card cases which require an Affidavit of Support are those in which the alien has a family relationship with the alien or where the alien has an ownership interest in the employer. Most employment-based green card cases do not require an Affidavit of Support. In recent months, however, our office has seen a number of interview notices in employment-based green card cases which ask for the alien to provide an Affidavit of Support. In those cases, our office has been successful in explaining to the United States Citizenship and Immigration Services why an Affidavit of

Support is not required. As a result, the alien has not been required to provide an Affidavit of Support.

### **Who signs the Affidavit of Support?**

Typically, the Petitioner (i.e., the person sponsoring the alien) is required to sign the Affidavit of Support. By signing the Affidavit of Support, the Petitioner agrees to provide the sponsored immigrant whatever support is necessary to maintain the sponsored immigrant at an income that is at least 125 percent of the federal poverty guideline.

If the Petitioner is unable to document a sufficient amount of income, then another individual who is willing to accept the obligations of the Affidavit of Support can sign an Affidavit of Support. This person is called a “Joint Sponsor” and must be either a United States citizen or lawful permanent resident. The Joint Sponsor does not have to be related to the sponsored immigrant.

### **Why is an Affidavit of Support required?**

The U.S. immigration laws presume that the sponsored immigrant will likely become a public charge (i.e., financially dependent on the government) unless an Affidavit of Support is filed on his behalf. Without providing the required Affidavit of Support, the green card application cannot be approved.

### **How much income is required?**

The amount of income that a sponsor must be able to document is based on the size of the sponsor’s family and the number of immigrants being sponsored in the Affidavit of Support. For example, if a sponsor is married and has 2 children and is sponsoring one other immigrant, the sponsor’s family size is considered to be 5 (himself, his spouse, 2 children and 1 sponsored immigrant). For a family of 5, the sponsor must be able to show \$28,262. The required amount of income increases or decreases depending on the size of the sponsor’s family and the number of immigrants being sponsored in the Affidavit of Support.

### **What type of documentation must be submitted with an Affidavit of Support?**

A sponsor must provide the following documentation: (1) evidence of U.S. citizenship or green card status; (2) copies of his last 3 years of federal income tax returns and all W-2 forms or 1099 forms; and (3) a current letter of employment. This evidence must show that the sponsor has the ability to maintain an income level at or above 125 percent of the federal poverty guideline. If the primary sponsor cannot demonstrate the required income, then a Joint Sponsor can be used. The Joint Sponsor must separately meet the required income level.

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