

New Rules on Affidavit of Support

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The new immigration law has made a significant change as regards affidavits of support. An affidavit of support must be in the form of a contract; it should be binding on the person signing it and breach of the terms thereof is actionable. The INS is tasked with framing this new form and has until December 29, 1996 to do this, but as of this writing, no new form has been issued.

Generally, it is the sponsor of the alien who executes the affidavit of support. However, a person other than the sponsor may execute the affidavit of support under certain circumstances such as when the sponsor is unable to support both his own family and the sponsored alien at an annual income of at least 125% of the federal poverty guidelines. In such cases, the affidavit may be enforced against this other person until the sponsored alien becomes a U.S. citizen or has worked for at least ten years in the U.S. The percentage is lowered to 100% of the federal poverty guidelines for active duty members of the armed forces who sponsor their spouse or child.

The affidavit of support is required in family-based preference cases, such as when a U.S. citizen petitions an immediate relative or when an immigrant's family is immigrating with him, in which case an affidavit is required for each of the family member. It is not needed however, if the alien's immigration is based (1) on a permanent employment offer or (2) on a family preference category but the alien is in the U.S. on some nonimmigrant category with authorization to work. In these two cases, an employment letter stating that the employer offers full-time permanent employment with an indication of sufficient salary is enough.

A sponsor of an alien must be at least 18 years old, a U.S. citizen or permanent resident and residing in the U.S. To prove his ability to provide support to both his family and the sponsored alien, the sponsor or person other than the sponsor who executed the affidavit must furnish (1) a certified copy of his federal income tax return for the past three years as well as a sworn statement that the copies are certified copies of said returns or (2) proof of vital possessions/resources or wealth of either the sponsored alien or his sponsor which can be used for the sponsored alien's support.

A sponsor or person other than the sponsor who executes the new affidavit of support is also required under the new law to inform the INS of any change in his address, within thirty days of said change. Otherwise, he will be fined.

If the sponsored alien has received any benefit not due him, the proper government agency may ask repayment from the sponsor who executed the affidavit of support. However, the sponsor-affiant will not be liable for repayment if the sponsored alien receives benefits from certain programs like emergency medical services, non-cash emergency disaster relief, school lunch and child nutrition benefits.

These new provisions shall take effect from between 60 and 90 days from the time that a new form of affidavit is issued. Hence, at present, these provisions are not yet effective.