

THE FILIPINO **EXPRESS**

April 10-16, 2000

New Guidelines on Support Affidavits

By Reuben S. Seguritan

Because of some confusion in filling out the new affidavit of support form (I-864), the Immigration Service has recently issued additional guidelines. The affidavit is required to show that an intending immigrant has adequate means of financial support and is not likely to become a public charge.

1. The affidavit becomes enforceable at the time the alien adjusts status or enters the United States with an immigrant visa. Thus, for INS purposes, the sponsor must be qualified (the I-864 must be sufficient) at the time adjustment of status is approved, not at the time the Form I-485 is filed.

Because of the lengthy processing time of adjustment cases, applicants will often need to bring updated documents to the adjustment interview. In order to ease this problem, local offices may set individual policy regarding whether Form I-864 should be submitted at the time of filing for adjustment or at the time of the adjustment interview. If the office chooses to request the Form I-864 at the time of filing for adjustment, such office may accept a signed Form I-864 that does not meet requirements. In this type of situation, additional or updated documentation proving eligibility must be submitted at the interview.

2. If the interview or adjudication takes place one year or more after the sponsor signed the affidavit of support, and the sponsor had submitted all the necessary documents at the time of filing, the officer may request updated documentation in order to establish that the sponsor currently meets the income requirements. However, a new affidavit of support is not required. In such a situation, even if the adjudication takes place a considerable length of time after the affidavit of support was signed, it is usually not necessary to require tax returns for the entire period subsequent to the three submitted at time of filing. A copy/transcript of the most recent Federal tax return and/or proof of current employment (and value of assets if needed to qualify) should usually be sufficient.
3. Question 4B of the I-864 asks if the sponsor or any member of his or her household has used means-tested benefits during the past three years. A sponsor is not disqualified based on a positive response to this question. The reason for this question is to ensure that the value of any such means-tested public benefits is not considered as income on the affidavit of support. Means-tested benefits currently include only SSI, TANF/AFDC, Medicaid, Children's Health Insurance Program (CHIP), and Food Stamps. Earned benefits such as Social Security retirement, Unemployment Compensation, and Workman's Compensation may be included as income.
4. A sponsored immigrant's income may be used toward meeting the income requirement if he or she has been living in the sponsor's residence for at least the previous six months. If the residence condition has been met at the time of the interview, then the sponsored immigrant's income can be used as part of the sponsor's household income. The sponsored immigrant does not need to complete a Form I-864A provided that he or she is

the only person included on the affidavit of support. The sponsored immigrant needs to complete Form I-864A, however, if he or she is using his or her income to qualify and has an accompanying spouse or children included on the affidavit of support.

5. By law, all petitioning and joint sponsors must submit copies of their three most recent Federal tax returns as well as all W-2s. Copies of any Forms 1099 that reflect income used to qualify must also be submitted, State tax returns are not required; if submitted they must be returned.

Generally, after April 15, a sponsor can be expedited to have completed the Federal tax return for the previous year. If an extension was requested the sponsor should provide proof of filing for the extension. If a sponsor did not file tax returns, he or she must prove that there was no obligation to file. Note that U.S. citizens generally have an obligation to file Federal Tax Returns on non-U.S. earnings, even if there was no tax liability.

If a sponsor should have filed, they must file retroactively and provide proof of filing. Note that U.S. citizens employed abroad must file U.S. tax returns on foreign earnings, even if they have not tax liability.

Submission of IRS transcripts of tax returns in place of photocopies of tax returns is encouraged. Photocopies of Forms W-2 and 1099 must still be submitted. Tax transcripts provide proof that the returns were filed with IRS, are easier to read, take up less room in the file, and are easily obtained. The most desirable way to obtain these documents is to order them, free of charge, by sending IRS Form 4506 to IRS. (It is also possible to get transcripts by phone or by going to a local IRS office in person, but the transcripts obtained through these means are somewhat less desirable.)

6. Letters from all current employers must be submitted with the I-864. These letters should show dates of employment, the nature of the job, wages or salary earned, number of hours/weeks worked, and prospects for the future employment and advancement. It is this current employment income that should generally be used to determine whether a sponsor meets the income requirements for Form I-864.
7. The Dept. of Health and Human Resources publishes new poverty guidelines in the Federal Register in February or March each year. These guidelines become effective for INS purposes on the first day of the first full month following their release. For example, in 1999, new poverty guidelines were published in the Federal Register on March 18, and became effective for INS purposes on May 1, 1999. The poverty guidelines for each year remain in effect during the next year until the effective date of the new guidelines.
8. The poverty guidelines that are in effect on the date of adjustment of status govern the amount of income required to meet the income requirements for the affidavit of support.