

## **Money Matters in the Immigration Context Financial Requirements & Public Charge Issues**

We've all heard that the more money you have the easier life will be. Well, that is true of the immigration process as well. Money matters because of the requirements of the Immigration and Nationality Act (INA) § 213A Affidavit of Support and § 212(a)(4) Public Charge provisions. These provisions exist to ensure that the immigrant will not become a financial burden to society accessing the U.S. public welfare system thus requiring government assistance in the form of cash payments known as Temporary Assistance for Needy Families (TANF), Medicaid for the payment of long term medical treatment, or food stamps. In the family or employment based immigration process the sponsor is required to complete an Affidavit of Support. There is a long form and a short form. And in other contexts of the Immigration process it is to ensure that the applicant does not work without authorization.

At the Embassy a consular officer may inquire as to how the visitor will support him or herself while traveling on vacation to the United States to ensure that the individual is not likely to work without authorization. It is critical to show that they are relying on income from their country of origin be it pension, savings or vacation pay. Thus, the wealthier an applicant appears to be, the more likely it is s/he will obtain a visa. If an individual has a formal letter of invitation which requires completion of the short form Affidavit of Support, then it is more likely that s/he will obtain a visa, although it is not a guarantee. The short form Affidavit of Support obligation lasts for up to three years and requires proof of sponsors' income. Once in the United States, extensions of stay in the visitor visa category require an applicant to provide proof either in the form of bank statements or commitment letters from relatives illustrating an ability to support them without working in the US without authorization. The commitment letters can state that the friend or extended family member will provide room and board and pay the visitor's medical expenses if necessary. Without these support documents it is highly unlikely that an Immigration or consular officer will approve a visa or extend a stay longer than the customary six months. Essentially, one must be able to answer the question, how will I remain in the United States for an extended period of time without income from employment either in my country or within the United States?

For applicants for Lawful Permanent Residency status (i.e. a Green Card), the sponsor is required to show proof of income by completing a long form Affidavit of Support. In an employment based visa case, it is critical for the sponsoring entity, be it an individual or company, to provide financial documentation such as balance sheets and profit/loss statements. Usually, the financial information serves two purposes: a) to illustrate the legitimacy of the business enterprise and b) the viability of paying workers who must operate and maintain the business. Although a completed long form Affidavit of Support is not required for employment based cases, the requirements of the Affidavit are incorporated into the guidelines for the petitions. An accountant may be required to prepare the financial statements necessary to show that the sponsoring individual or corporation can pay the immigrant a reasonable salary so that s/he is less likely to become a public charge, needing government assistance.

For most individuals the process of completing the long form Affidavit of Support may not be a problem, but for others it may be a burden. The family based visa context is where most problems arise. The family sponsor must meet a requirement established by the Poverty Income Guidelines which is published each year. The financial requirement is based on household size. The more individuals that reside in a home who are related by marriage or blood, the higher the income requirement. In addition, if the sponsor is legally obligated to sponsor others outside the home, this will factor into the income requirement as well. For instance, sponsors who have child support because of dependent children or alimony obligations must include these facts in their Affidavits.

The sponsor must be presently employed and must provide his or her tax returns, pay stubs and a current job verification letter. If the sponsor does not meet the Poverty Income Guidelines although s/he is employed, then there are alternatives or exceptions that allow them to still meet the requirements. Likewise, if the sponsor is unemployed or retired, s/he must use a co-sponsor or assets. A co-sponsor is another individual who is a U.S. citizen or permanent resident willing to assume the responsibilities of sponsorship and can provide the required documentation. The use of assets is another way the sponsor may supplement the deficit in income. Use of a formula is used to determine whether the asset is sufficient to make up the deficit. Assets must be documented and the value can be determined by using statements of value or appraisal reports. Assets can be real estate, life insurance policy cash surrender value, stocks and bonds, or savings and certificates of deposit. The sponsored immigrant can also include his or her income if and only if they have permission to work in the U.S. and can provide proof of income. It should be noted that if the sponsor can find neither, assets or a co-sponsor, a visa petition or Permanent Residency application can be denied on this basis. Also, if the immigrant is not healthy or able bodied, in the case of the elderly or disabled, then an Immigration or consular officer may deny the applicant on the basis that s/he is likely to become a public charge. This is of course a discretionary decision. It should be noted, however, that battered spouses and juvenile petitioners are exempt from providing affidavits of support.

So, what are the obligations of the long form Affidavit of Support? By signing the form, the sponsor agrees to financially support the immigrant in the event s/he is unable to support him or herself. This obligation lasts until the sponsor dies, or when the immigrant earns 40 quarters (10 years) in the U.S. social security system, becomes a U.S. citizen, leaves the U.S. permanently, or dies. This obligation does survive divorce in the context of marriage cases. The obligation allows the government, any third party, or the immigrant to sue the sponsor to recuperate benefits paid to the immigrant or necessary to maintain and support the immigrant. The Affidavit of Support may also disqualify or prohibit the receipt of certain assistance such as Medicaid and may require the sponsor to pay medical bills out of pocket as in the case of an immigrant who is rendered permanently or temporarily disabled because of major illness or catastrophic accident.

Thus in Immigration be prepared to show the money and I don't mean a bribe. If applying for a visitor's visa be prepared to demonstrate how you will support yourself while vacationing in the United States. For permanent resident petitions, be sure that the sponsor can provide the required documentation and is willing to meet the support

obligations. And as an immigrant make sure you understand the hardship you could create for your loved one, do not be burden to the society and work, work work!