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Financial Support Requirements for Immigrant Spouse using Form I-864

I am sponsoring my husband for a green card but I am currently not making enough to sponsor his Affidavit of Support. A friend of mine might be a co-sponsor for my husband, but my friend has some questions that I couldn't find all the answers to. I checked out the USCIS website and saw what the over all responsibilities are, but the potential co-sponsor wants to know what they are responsible for, say, if my husband gets injured and needs to go to the hospital during the 3 years before he becomes a citizen. Are they responsible for any medical bills, or would my husband and I be able to pay for those on our own? Or, what if my husband gets in an accident and is sued. Are they then potentially financially responsible or again, can my husband and I make sure that we take care of the problem without involving the sponsor?

Another question I have is regarding the sponsor. The USCIS website mentioned that there is a co-sponsor role, where another person can add their income to mine and help me meet the financial requirement for my husband? I have many people who can help me with this, but if we have a joint sponsor will the person be responsible for our whole household? Am I correct in my understanding, or will a co-sponsor do for our situation? We know we need to get someone to help us but my friends are just concerned about their real responsibility, and rightly so.

Lastly, what happens if we are unable to find a sponsor of either kind? It seems that my husband's application would be denied. Are we able to file the application later when we can find someone or are we taking a huge risk? In a few months time, I will be making more money and within a year I could possibly have a tax return with an adequate income. Once I can produce a better income for my family, will I be able to take over as full sponsor and relieve the other person of their sponsorship or is it set in stone?

Thank you for your response.

I wish I could give you simple answers regarding the Affidavit of Support. For many years, Susanna and I and other immigration lawyers simply told people it was a simple obligation used to prevent immigrants from getting

welfare and other government benefits. No one thought that it created a contract between anyone, especially with the immigrant. Then, the government issued new regulations and courts have interpreted the document much more broadly. The courts have since interpreted the Affidavit to be a contract, enforceable in court, by the federal or state government or by the immigrant.

There are 3 possibilities when the petitioner's income does not meet the required level, including a couple of options for a co-sponsor. Here is a description of those 3 options from the I-864 rules:

(1) Use of Intending Immigrant's Income. If the sponsor does not meet the income requirement on the basis of his or her own income and/or assets, the sponsor may also count the intending immigrant's income if (1)(a) the intending immigrant is either the sponsor's spouse or (b) has the same principal residence as the sponsor, and (2) the preponderance of the evidence shows that the intending immigrant's income results from the intending immigrant's lawful employment in the United States or from some other lawful source that will continue to be available to the intending immigrant after he or she acquires permanent resident status. The prospect of employment in the United States that has not yet actually begun does not count toward meeting this requirement.

(2) Use of Intending Immigrant's Assets. If the sponsor does not meet the income requirement using his or her own income and/or assets, the sponsor may include the net value (the total value of the assets less any offsetting liabilities) of the intending immigrant's assets. The instructions to Part 6 of Form I-864 indicate that the intending immigrant does not need to complete Form I-864A if he or she is using his or her assets to qualify even if he or she has an accompanying spouse and/or children. Instead, the intending immigrant only needs to provide documentation showing the net value of all assets.

(3) Joint Sponsor Needed. If the petitioner or substitute sponsor cannot demonstrate the ability to maintain an income of at least 125% (or 100% when applicable) of the Federal Poverty Guidelines, the intending immigrant may meet the Affidavit of Support requirement by obtaining a joint sponsor who is willing to accept joint and several liability with the principal sponsor as to the obligation to provide support to the sponsored alien and to reimburse agencies who provide means-tested benefits to the sponsored alien during the period that the Affidavit is enforceable. The joint sponsor must demonstrate income or assets that independently meet the requirements to support the sponsored immigrant(s). It is not sufficient for the combination of

incomes of the primary sponsor, sponsored immigrant and joint sponsor to meet the threshold.

One of the most common methods of overcoming the limited income problem without using a co-sponsor is the use of the family assets to make up the shortfall in the petitioner's income. You need \$3 dollars in assets for each \$1 of income you are below the 125% of the poverty level in income for adjustment cases based upon marriage to a US citizen like yours. Here is a description of how this works with some examples:

(5) Part 7 of Form I-864: Use of Assets to Supplement Sponsor's Income. If a sponsor cannot meet the Poverty Guideline requirement based upon total household income listed on line 24c, he or she may show evidence of assets owned by the sponsor, and/or members of the sponsor's household, that are available to support the sponsored immigrant(s) and can be readily converted into cash within 1 year.

For assets of the intending immigrant and/or household member to be considered, the household member must complete and sign Form I-864A. USCIS should check to make sure that the Form I-864A is completed and signed by the sponsor and the household member.

(A) Evidence of assets. Evidence of the sponsor's assets should be attached to the Form I-864. Evidence of the principal sponsored immigrant's and/or household member assets should be attached to Form I-864A. In each instance, the evidence should establish the location, ownership, and value of each listed asset, including any liens or liabilities for each listed asset. Evidence of assets includes, but is not limited to:

- Bank statements covering the last 12 months, or a statement from an officer of the bank or other financial institution in which the sponsor has deposits, including deposit/withdrawal history for the last 12 months, and current balance;
- Evidence of ownership and value of stocks, bonds, and certificates of deposit, and dates acquired;
- Evidence of ownership and value of other personal property and dates acquired; and
- Evidence of ownership and value of any real estate and dates acquired.

(B) Amount of assets required. In order to qualify using assets, the total net value of all assets must generally equal at least five times the difference between the sponsor's total household income and the minimum income requirement for the current year.

The main exceptions cover spouses of US citizens and children over 18 (there is another exception for orphans coming to be adopted):

Under this exception, the "significant assets" requirement will be satisfied if the assets equal three times, rather than five times, the difference

between the applicable income threshold and the actual household income.

Example for a household size of 4:
125 percent of 2006 Poverty Guideline \$25,000
Sponsor's income \$19,500
Difference \$5,500
Multiply by 3 x 3
Minimum Required Net Value of Assets \$16,500

Unfortunately, there is no way to substitute yourself for another co-sponsor later. A co-sponsor is equally liable with the petitioner for the maintenance of the immigrant.

I hope this answers all your questions. I recommend sending in the application for the green card, even if it is sent without the additional affidavit of support or other evidence of financial support. That will put your husband back into legal status and the additional material can be submitted later when requested to do so by the CIS, usually in the next several months. However, if you don't think you will be able to solve this problem with any of the above options in the next few months, then you can wait until your income rises. The risk of doing this is that your husband will remain out of status and subject to deportation if he is stopped by authorities. If that happened, it would definitely complicate the situation.

CHRISTOPHER A. KEROSKY of the law firm of KEROSKY PURVES & BOGUE has practiced law since 1984 and has been recognized as one of the top immigration lawyers in Northern California for the last six years by San Francisco Magazine "Super Lawyers" edition (2006-2011). He graduated from University of California, Berkeley Law School and was a former counsel for the U.S. Department of Justice in Washington D.C. He has had his own law office in downtown San Francisco for 20 years.