



## MY COMMENT ON PROPOSED AFFIDAVIT OF SUPPORT REVISIONS – DO YOU HAVE ONE TOO?

*Posted on April 20, 2020 by David Isaacson*

USCIS has recently [proposed changes](#) to the [Form I-864](#), Affidavit of Support Under Section 213A of the Act, which is used by petitioners in family-based immigration cases and certain employment-based immigration cases to promise to provide required support to an immigrant as required under [section 212\(a\)\(4\) of the INA, 8 U.S.C. 1182\(a\)\(4\)](#). Similar changes are also proposed to the related [Form I-864EZ](#), a simplified version of the affidavit of support for certain sponsors with straightforward tax situations, and [Form I-864A](#) Contract Between Sponsor and Household Member, used when the income of a household member other than the sponsored immigrant is to be counted towards meeting the minimum income requirement.

To summarize, in addition to changing language throughout the form and instructions in what USCIS claims is an effort [“to better inform sponsors and household members of their support obligations”](#), USCIS has proposed substantive changes to the way in which the forms must be executed and the information that will need to be provided in them. USCIS has proposed to add the requirement that the forms be executed before a notary public, and that bank account information be collected from the sponsor or household member. There will also be an option for the sponsor or household member to submit a credit report.

Public comments on the proposed changes, according to USCIS, [“are encouraged and will be accepted until May 11, 2020.”](#) Comments can be submitted online [at regulations.gov](#) with reference to OMB Control Number 1615-0075, agency name/Docket ID USCIS- 2007-0029.

I have submitted a [comment](#), which seemed worth reproducing here even though in principle it is available to the public already [on regulations.gov](#). I

would encourage readers who have their own concerns about the proposed revisions to submit comments as well. (A note, however, for anyone who agrees with my comment and was thinking of resubmitting it verbatim: identical comments are likely to be ignored, so it is better if you add or alter something to express your own views and not just mine.) My comment was as follows:

I write to comment regarding OMB Control Number 1615-0075, agency name/Docket ID USCIS- 2007-0029.

The proposed requirement that an I-864, I-864EZ or I-864A be notarized by a notary public would be in violation of federal statute, specifically section 1746 of Title 28, United States Code. That section provides:

"Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".

Congress has determined that in matters subject to federal law and regulation, any affidavit which would ordinarily be required to be taken before a notary public may instead be substituted "with like force and effect" by an unsworn declaration under penalty of perjury including the appropriate language. USCIS has no authority to override this statute through a change in form instructions, If the instructions are not altered to allow for the possibility of an unsworn

declaration under penalty of perjury pursuant to 28 USC 1746, rather than a notarization, they will be in violation of the law.

USCIS is well aware of how to offer the option of a statement under penalty of perjury pursuant to 28 USC 1746 instead of a notarized signature. Page 4, Part 4 of the Form G-639, Freedom of Information/Privacy Act Request, contains precisely this option. If USCIS insists on adding notarization or the equivalent to Forms I-864, I-864A, and I-864EZ, then it must provide the same option as on the G-639.

The proposed requirement to provide bank account information is also in severe tension with the statute. 8 USC 1183a(g)(6) clearly provides that certified copies of tax returns, accompanied by a written statement under oath or under penalty of perjury under section 1746 of title 28 regarding such copies, are the primary means of demonstrating means to maintain the required level of income, and that the possibility of proving assets is an additional form of "flexibility" offered where necessary:

"(6) Demonstration of means to maintain income

(A) In general

(i) Method of demonstration

For purposes of this section, a demonstration of the means to maintain income shall include provision of a certified copy of the individual's Federal income tax return for the individual's 3 most recent taxable years and a written statement, executed under oath or as permitted under penalty of perjury under section 1746 of title 28, that the copies are certified copies of such returns.

(ii) Flexibility

For purposes of this section, aliens may demonstrate the means to maintain income through demonstration of significant assets of the sponsored alien or of the sponsor, if such assets are available for the support of the sponsored alien."

It does not demonstrate "flexibility" to require sponsors, or sponsored aliens, to prove their assets or related information in circumstances where the certified copies of the sponsor's tax returns provided under 8 USC 1183a(g)(6) already establish ability to maintain sufficient income. Doing so is therefore inconsistent with the statutory structure.

Moreover, there are good practical reasons for sponsors not to want to provide information regarding their bank accounts unnecessarily. In the event of lost or misdirected mail, for example, such information could facilitate the theft of funds from the sponsor by anyone who were to inappropriately come into possession of the I-864, I-864A or I-864EZ. USCIS has no statutory basis to impose this risk on those who can demonstrate sufficient income through their tax returns.

These proposed changes appear to represent an inappropriate effort by USCIS to hinder family-based immigration authorized by Congress, without statutory authority to do so. They should be rejected.