

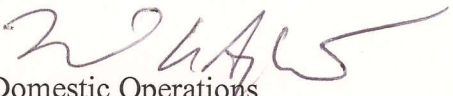


U.S. Citizenship
and Immigration
Services

HQOPRD 70/21.1.13

Interoffice Memorandum

To: REGIONAL DIRECTORS
SERVICE CENTER DIRECTORS
DISTRICT DIRECTORS
NATIONAL BENEFITS CENTER DIRECTOR

From: Michael Aytes 
Acting Director for Domestic Operations

Date: November 23, 2005

RE: USCIS policy regarding Form I-864, Affidavit of Support

1. Purpose

This memorandum notifies adjudicators that USCIS has determined, as permitted by section 213A(f)(6)(B) of the Immigration and Nationality Act (Act), that a person completing an Affidavit of Support (Form I-864) on behalf of an adjustment of status applicant is only required to file one Federal income tax return, for the tax year that is most recent as of the date the Form I-864 was signed, rather than having to submit a Federal income tax return for each of the three most recent tax years. This memorandum also clarifies how USCIS officers are to determine the sufficiency of a Form I-864.

Effective immediately, this policy memorandum supersedes all conflicting provisions in previous memoranda and will be incorporated into 8 CFR 213a, in a separate rulemaking, and section 20.5 of the Adjudicator's Field Manual at a later date.

2. Field Guidance

A. Submission of Federal income tax returns

Section 213A(f)(6)(A)(i) of the Act provides that a sponsor must submit certified copies of the sponsor's three most recent Federal income tax returns. However, section 213A(f)(6)(B) of the Act provides the Secretary of Homeland Security with discretion in adjustment of status cases to allow a sponsor to file only his or her most recent Federal income tax return. USCIS has

cases to allow a sponsor to file only his or her most recent Federal income tax return. USCIS has adopted this alternative.

Therefore, for any Form I-485 filed on or after the date of this memorandum, the sponsor shall not be required to file any Federal income tax return for any year other than the tax year immediately preceding the sponsor's signing of the Form I-864. For example, if the sponsor signed the Form I-864 after April 15, 2005, only the sponsor's 2004 Federal income tax return would be required. However, the sponsor may file the three most recent returns if the sponsor believes that the additional returns will make it more likely that the Form I-864 will be found to be sufficient. This rule shall apply to petitioning sponsors, as well as substitute or joint sponsors signing a Form I-864 for an adjustment case.

For any Form I-485 filed before the date of this memorandum, the sponsor should have filed the three most recent income tax returns. An officer may encounter a case in which the sponsor has included the most recent income tax return but not one or both of the two earlier returns. Given the change of policy made by this memorandum, adjudicators are no longer required to issue a request for evidence (RFE) for the missing earlier return(s).

Note also that IRS will, without charge, issue a taxpayer a transcript of the taxpayer's income tax return if the taxpayer files IRS Form 4506T. For purposes of the affidavit of support requirements, officers shall accept an IRS-generated transcript as a true and correct "copy" of the sponsor's return. Since the IRS itself issues the transcript, it will not be necessary for USCIS to request any missing Forms W-2 or 1099 if the sponsor submits a transcript, rather than a photocopy, of the tax return.

A USCIS officer may also decide that a request for evidence is not necessary in a case in which the sponsor filed a photocopy of the tax return, instead of a transcript, but did not submit the Forms W-2 or 1099. A decision not to RFE for the W-2 or 1099 will be proper if the officer concludes that the evidence of record, taken as a whole, establishes that the information on the tax return is true and correct.

B. Sufficiency of the Form I-864

USCIS officers shall, as a general rule, determine the sufficiency of a Form I-864 based upon whether evidence in the file establishes that the sponsor has the means to maintain an annual income at the applicable threshold set forth in the Form I-864P, Poverty Guidelines, from the calendar year in which the Form I-864 was filed. Accordingly, adjudicators shall determine whether the current income listed on Form I-864 is at least 125% (or 100% as applicable) of the governing threshold set forth in the Poverty Guidelines. Adjudicators shall also determine whether the sponsor's total income (line 22 on the 2004 IRS Form 1040, line 15 on the 2004 IRS Form 1040A), or adjusted gross income for those who filed IRS Form 1040EZ (line 4 of the 2004 IRS Form 1040EZ), meets the Poverty Guidelines threshold. Note, when reviewing the prior year's tax return submitted with the Form I-485, USCIS officers should judge the income information against the poverty guidelines applicable at the time of submission.

If the information on the tax return establishes that the sponsor's current income meets the threshold set forth in the Form I-864P, Poverty Guidelines, the adjudicator shall determine that the Form I-864 is sufficient without requesting any further evidence. The adjudicator should request additional evidence (i.e., employment letter(s), pay stub(s), or other financial data) only if the tax return reflects income below the Form I-864P, Poverty Guidelines and the record does not already contain additional evidence that would establish the sponsor meets the current income requirements. The adjudicator should also request additional evidence (i.e., employment letter(s), pay stub(s), or other financial data) if there is a specific reason (other than the passage of time) to question the veracity of the income stated on Form I-864 or the accompanying document(s).

If the officer determines that the tax return and/or the evidence in the file do not establish that the sponsor meets the governing Form I-864P, Poverty Guidelines threshold, the adjudicator shall request *current year* income information, not additional information from the year the sponsor signed Form I-864. In this situation, the sufficiency of the Form I-864 is determined based upon the additional evidence as it relates to the applicable threshold set forth in the Form I-864P from current year rather than the Form I-864P, Poverty Guidelines from the calendar year in which the Form I-864 was signed.

C. No Local Policy Regarding When Form I-864 Shall be Filed

Previously USCIS has permitted each local office to establish its own policy on whether to require submission of Form I-864 at the time of filing for adjustment or at the time of the adjustment interview. Effective with the publication of this memorandum, all applicants are now required to submit Form I-864 with their adjustment application. If the case was filed prior to this policy change at an office that required submission at the time of the adjustment interview, the adjudicator should allow the applicant to submit Form I-864 and the required supporting documentation at the interview.

3. Contact Information

Questions regarding this memorandum and USCIS policy regarding Form I-864, Affidavit of Support, may be directed by email through appropriate supervisory channels to Jonathan Mills, USCIS Office of Program and Regulations Development.