

who is willing to sign the affidavit of support in place of the now-deceased person who filed a relative or fiancé(e) petition that provides the basis for the intending immigrant's ability to seek permanent residence.

[62 FR 54352, Oct. 20, 1997, as amended at 71 FR 35749, June 21, 2006; 76 FR 53788, Aug. 29, 2011]

§ 213a.2 Use of affidavit of support.

(a) *Applicability of section 213a affidavit of support.* (1)(i)(A) In any case specified in paragraph (a)(2) of this section, an intending immigrant is inadmissible as an alien likely to become a public charge, unless the qualified sponsor specified in paragraph (b) of this section or a substitute sponsor and, if necessary, a joint sponsor, has executed on behalf of the intending immigrant an affidavit of support on the applicable form designated by USCIS in accordance with the requirements of section 213A of the Act and the form instructions. Each reference in this section to the affidavit of support or the form is deemed to be a reference to all such forms designated by USCIS for use by a sponsor for compliance with section 213A of the Act.

(B) If the intending immigrant claims that, under paragraph (a)(2)(ii)(A), (C), or (E) of this section, the intending immigrant is exempt from the requirement to file an affidavit of support, the intending immigrant must include with his or her application for an immigrant visa or adjustment of status an exemption request on the form designated by USCIS for this purpose.

(ii) An affidavit of support is executed when a sponsor signs and submits the appropriate forms in accordance with the form instructions to USCIS or the Department of State, as appropriate.

(iii) A separate affidavit of support is required for each principal beneficiary.

(iv) Each immigrant who will accompany the principal intending immigrant must be included on the affidavit. See paragraph (f) of this section for further information concerning immigrants who intend to accompany or follow the principal intending immigrant to the United States.

(v)(A) Except as provided for under paragraph (a)(1)(v)(B) of this section, the Department of State consular officer, immigration officer, or immigration judge will determine the sufficiency of the affidavit of support based on the sponsor's, substitute sponsor's, or joint sponsor's reasonably expected household income in the year in which the intending immigrant filed the application for an immigrant visa or for adjustment of status, and based on the evidence submitted with the affidavit of support and the Poverty Guidelines in effect when the intending immigrant filed the application for an immigrant visa or adjustment of status.

(B) If more than one year passes between the filing of the affidavit of support or required affidavit of support attachment form and the hearing, interview, or examination of the intending immigrant concerning the intending immigrant's application for an immigrant visa or adjustment of status, and the Department of State officer, immigration officer or immigration judge determines, in the exercise of discretion, that the particular facts of the case make the submission of additional evidence necessary to the proper adjudication of the case, then the Department of State officer, immigration officer or immigration judge may direct the intending immigrant to submit additional evidence. A Department of State officer or immigration officer shall make the request in writing, and provide the intending immigrant not less than 30 days to submit the additional evidence. An immigration judge may direct the intending immigrant to submit additional evidence and also set the deadline for submission of the initial evidence in any manner permitted under subpart C of 8 CFR part 1003 and any local rules of the Immigration Court. If additional evidence is required under this paragraph, an intending immigrant must submit additional evidence (including copies or transcripts of any income tax returns for the most recent tax year) concerning the income or employment of the sponsor, substitute sponsor, joint sponsor, or household member in the year in which the Department of State officer, immigration officer, or immigration judge makes the request for additional

§213a.2

8 CFR Ch. I (1–13 Edition)

evidence. In this case, the sufficiency of the affidavit of support and any required affidavit of support attachment will be determined based on the sponsor's, substitute sponsor's, or joint sponsor's reasonably expected household income in the year the Department of State officer, immigration officer or immigration judge makes the request for additional evidence, and based on the evidence submitted in response to the request for additional evidence and on the Poverty Guidelines in effect when the request for evidence was issued.

(2)(i) Except for cases specified in paragraph (a)(2)(ii) of this section, paragraph (a)(1) of this section applies to any application for an immigrant visa or for adjustment of status filed on or after December 19, 1997, in which an intending immigrant seeks an immigrant visa, admission as an immigrant, or adjustment of status as:

(A) An immediate relative under section 201(b)(2)(A)(i) of the Act, including orphans and any alien admitted as a K nonimmigrant when the alien seeks adjustment of status;

(B) A family-based immigrant under section 203(a) of the Act; or

(C) An employment-based immigrant under section 203(b) of the Act, if a relative (as defined in 8 CFR 213a.1) of the intending immigrant is a citizen or an alien lawfully admitted for permanent residence who either filed the employment-based immigrant petition or has a significant ownership interest in the entity that filed the immigrant visa petition on behalf of the intending immigrant. An affidavit of support under this section is not required, however, if the relative is a brother or sister of the intending immigrant, unless the brother or sister is a citizen.

(ii) Paragraph (a)(1) of this section shall not apply if the intending immigrant:

(A) Filed a visa petition on his or her own behalf pursuant to section 204(a)(1)(A)(ii), (iii), or (iv) or section 204(a)(1)(B)(ii) or (iii) of the Act, or who seeks to accompany or follow-to-join an immigrant who filed a visa petition on his or his own behalf pursuant to section 204(a)(1)(A)(ii), (iii), or (iv) or section 204(a)(1)(B)(ii) or (iii) of the Act;

(B) Seeks admission as an immigrant on or after December 19, 1997, in a category specified in paragraph (a)(2)(i) of this section with an immigrant visa issued on the basis of an immigrant visa application filed with the Department of State officer before December 19, 1997;

(C) Establishes, on the basis of the alien's own Social Security Administration record or those of his or her spouse or parent(s), that he or she has already worked, or under section 213A(a)(3)(B) of the Act, can already be credited with, 40 qualifying quarters of coverage as defined under title II of the Social Security Act, 42 U.S.C. 401, *et seq*;

(D) Is a child admitted under section 211(a) of the Act and 8 CFR 211.1(b)(1); or

(E) Is the child of a citizen, if the child is not likely to become a public charge (other than because of the provision of section 212(a)(4)(C) of the Act), and the child's lawful admission for permanent residence will result automatically in the child's acquisition of citizenship under section 320 of the Act, as amended. This exception applies to an alien orphan if the citizen parent(s) has (or have) legally adopted the alien orphan before the alien orphan's acquisition of permanent residence, and if both adoptive parents personally saw and observed the alien orphan before or during the foreign adoption proceeding. An affidavit of support under this part is still required if the citizen parent(s) will adopt the alien orphan in the United States only after the alien orphan's acquisition of permanent residence. If the citizen parent(s) adopted the alien orphan abroad, but at least one of the adoptive parents did not see and observe the alien orphan before or during the foreign adoption proceeding, then an affidavit of support under this part is still required, unless the citizen parent establishes that, under the law of the State of the alien orphan's intended residence in the United States, the foreign adoption decree is entitled to recognition without the need for a formal administrative or judicial proceeding in the State of proposed residence. In the case of a child who immigrates as a Convention adoptee, as defined in 8

CFR 204.301, this exception applies if the child was adopted by the petitioner in the Convention country. An affidavit of support under this part is still required in the case of a child who immigrates as a Convention adoptee if the petitioner will adopt the child in the United States only after the child's acquisition of permanent residence.

(b) *Affidavit of support sponsors.* The following individuals must execute an affidavit of support on behalf of the intending immigrant in order for the intending immigrant to be found admissible on public charge grounds:

(1) *For immediate relatives and family-based immigrants.* The person who filed a relative, orphan or fiancé(e) petition, the approval of which forms the basis of the intending immigrant's eligibility to apply for an immigrant visa or adjustment of status as an immediate relative or a family-based immigrant, must execute an affidavit of support on behalf of the intending immigrant. If the intending immigrant is the beneficiary of more than one approved immigrant visa petition, it is the person who filed the petition that is actually the basis for the intending immigrant's eligibility to apply for an immigrant visa or adjustment of status who must file the an affidavit of support.

(2) *For employment-based immigrants.* A relative of an intending immigrant seeking an immigrant visa under section 203(b) of the Act must file a if the relative either filed the immigrant visa petition on behalf of the intending immigrant or owns a significant ownership interest in an entity that filed an immigrant visa petition on behalf of the intending immigrant, but only if the relative is a citizen or an alien lawfully admitted for permanent residence. If the intending immigrant is the beneficiary of more than one relative's employment-based immigrant visa petition, it is the relative who filed the petition that is actually the basis for the intending immigrant's eligibility to apply for an immigrant visa or adjustment of status who must file the an affidavit of support.

(c) *Sponsorship requirements.* (1)(i) *General.* A sponsor must be:

(A) At least 18 years of age;

(B) Domiciled in the United States or any territory or possession of the United States; and

(C)(I) A citizen or an alien lawfully admitted for permanent residence in the case described in paragraph (a)(2)(i) of this section; or

(2) A citizen or national or an alien lawfully admitted for permanent residence if the individual is a substitute sponsor or joint sponsor.

(ii) *Determination of domicile.* (A) If the sponsor is residing abroad, but only temporarily, the sponsor bears the burden of proving, by a preponderance of the evidence, that the sponsor's domicile (as that term is defined in 8 CFR 213a.1) remains in the United States, *provided*, that a permanent resident who is living abroad temporarily is considered to be domiciled in the United States if the permanent resident has applied for and obtained the preservation of residence benefit under section 316(b) or section 317 of the Act, *and provided further*, that a citizen who is living abroad temporarily is considered to be domiciled in the United States if the citizen's employment abroad meets the requirements of section 319(b)(1) of the Act.

(B) If the sponsor is not domiciled in the United States, the sponsor can still sign and submit an affidavit of support so long as the sponsor satisfies the Department of State officer, immigration officer, or immigration judge, by a preponderance of the evidence, that the sponsor will establish a domicile in the United States on or before the date of the principal intending immigrant's admission or adjustment of status. The intending immigrant will be inadmissible under section 212(a)(4) of the Act, and the immigration officer or immigration judge must deny the intending immigrant's application for admission or adjustment of status, if the sponsor has not, in fact, established a domicile in the United States on or before the date of the decision on the principal intending immigrant's application for admission or adjustment of status. In the case of a sponsor who comes to the United States intending to establish his or her principal residence in the United States at the same time as the principal intending immigrant's arrival and application for admission at a

port-of-entry, the sponsor shall be deemed to have established a domicile in the United States for purposes of this paragraph, unless the sponsor is also a permanent resident alien and the sponsor's own application for admission is denied and the sponsor leaves the United States under a removal order or as a result of the sponsor's withdrawal of the application for admission.

(2) *Demonstration of ability to support intending immigrants.* In order for the intending immigrant to overcome the public charge ground of inadmissibility, the sponsor must demonstrate the means to maintain the intending immigrant at an annual income of at least 125 percent of the Federal poverty line. If the sponsor is on active duty in the Armed Forces of the United States (other than active duty for training) and the intending immigrant is the sponsor's spouse or child, the sponsor's ability to maintain income must equal at least 100 percent of the Federal poverty line.

(i) *Proof of income.* (A) The sponsor must include with the an affidavit of support either a photocopy or an Internal Revenue Service-issued transcript of his or her complete Federal income tax return for the most recent taxable year (counting from the date of the signing, rather than the filing, of the an affidavit of support. However, the sponsor may, at his or her option, submit tax returns for the three most recent years if the sponsor believes that these additional tax returns may help in establishing the sponsor's ability to maintain his or her income at the applicable threshold set forth in the Poverty Guidelines. Along with each transcript or photocopy, the sponsor must also submit as initial evidence copies of all schedules filed with each return and (if the sponsor submits a photocopy, rather than an IRS transcript of the tax return(s)) all Forms W-2 (if the sponsor relies on income from employment) and Forms 1099 (if the sponsor relies on income from sources documented on Forms 1099) in meeting the income threshold. The sponsor may also include as initial evidence: Letter(s) evidencing his or her current employment and income, paycheck stub(s) (showing earnings for the most recent

six months, financial statements, or other evidence of the sponsor's anticipated household income for the year in which the intending immigrant files the application for an immigrant visa or adjustment of status. By executing an affidavit of support, the sponsor certifies under penalty of perjury under United States law that the evidence of his or her current household income is true and correct and that each transcript or photocopy of each income tax return is a true and correct transcript or photocopy of the return that the sponsor filed with the Internal Revenue Service for that taxable year.

(B) If the sponsor had no legal duty to file a Federal income tax return for the most recent tax year, the sponsor must explain why he or she had no legal duty to file a Federal income tax return for that year. If the sponsor claims he or she had no legal duty to file for any reason other than the level of the sponsor's income for that year, the initial evidence submitted with the an affidavit of support must also include any evidence of the amount and source of the income that the sponsor claims was exempt from taxation and a copy of the provisions of any statute, treaty, or regulation that supports the claim that he or she had no duty to file an income tax return with respect to that income. If the sponsor had no legal obligation to file a Federal income tax return, he or she may submit other evidence of annual income. The fact that a sponsor had no duty to file a Federal income tax return does not relieve the sponsor of the duty to file an affidavit of support.

(C)(1) The sponsor's ability to meet the income requirement will be determined based on the sponsor's household income. In establishing the household income, the sponsor may rely entirely on his or her personal income, if it is sufficient to meet the income requirement. The sponsor may also rely on the income of the sponsor's spouse and of any other person included in determining the sponsor's household size, if the spouse or other person is at least 18 years old and has completed and signed an affidavit of support attachment. A person does not need to be a U.S. citizen, national, or alien lawfully admitted for permanent residence in order to

Department of Homeland Security

§ 213a.2

sign an affidavit of support attachment.

(2) Each individual who signs an affidavit of support attachment agrees, in consideration of the sponsor's signing of the an affidavit of support, to provide to the sponsor as much financial assistance as may be necessary to enable the sponsor to maintain the intending immigrants at the annual income level required by section 213A(a)(1)(A) of the Act, to be jointly and severally liable for any reimbursement obligation that the sponsor may incur, and to submit to the personal jurisdiction of any court that has subject matter jurisdiction over a civil suit to enforce the contract or the affidavit of support. The sponsor, as a party to the contract, may bring suit to enforce the contract. The intending immigrants and any Federal, state, or local agency or private entity that provides a means-tested public benefit to an intending immigrant are third party beneficiaries of the contract between the sponsor and the other individual or individuals on whose income the sponsor relies and may bring an action to enforce the contract in the same manner as third party beneficiaries of other contracts.

(3) If there is no spouse or child immigrating with the intending immigrant, then there will be no need for the intending immigrant to sign a Form I-864A, even if the sponsor will rely on the continuing income of the intending immigrant to meet the income requirement. If, however, the sponsor seeks to rely on an intending immigrant's continuing income to establish the sponsor's ability to support the intending immigrant's spouse or children, then the intending immigrant whose income is to be relied on must sign the .

(4) If the sponsor relies on the income of any individual who has signed an affidavit of support attachment, the sponsor must also include with the affidavit of support and an affidavit of support attachment, with respect to the person who signed the an affidavit of support attachment, the initial evidence required under paragraph (c)(2)(i)(A) of this section. The household member's tax return(s) must be for the same tax year as the sponsor's

tax return(s). An individual who signs an affidavit of support attachment certifies, under penalty of perjury, that the submitted transcript or photocopy of the tax return is a true and correct transcript or photocopy of the Federal income tax return filed with the Internal Revenue Service, and that the information concerning that person's employment and income is true and correct.

(5) If the person who signs the affidavit of support attachment is not an intending immigrant, and is any person other than the sponsor's spouse or a claimed dependent of the sponsor, the sponsor must also attach proof that the person is a relative (as defined in 8 CFR 213a.1) of the sponsor and that the affidavit of support attachment signer has the same principal residence as the sponsor. If an intending immigrant signs an affidavit of support attachment, the sponsor must also provide proof that the sponsored immigrant has the same principal residence as the sponsor, unless the sponsored immigrant is the sponsor's spouse.

(D) *Effect of failure to file income tax returns.* If a sponsor, substitute sponsor, joint sponsor, or household member did not file a Federal income tax return for the year for which a transcript or photocopy must be provided, the affidavit of support or an affidavit of support attachment will not be considered sufficient to satisfy the requirements of section 213A of the Act, even if the household income meets the requirements of section 213A of the Act, unless the sponsor, substitute sponsor, joint sponsor, or household member proves, by a preponderance of the evidence, that he or she had no duty to file. If the sponsor, substitute sponsor, joint sponsor or household member cannot prove that he or she had no duty to file, then the affidavit of support or an affidavit of support attachment will not be considered sufficient to satisfy the requirements of section 213A of the Act until the sponsor, substitute sponsor, joint sponsor, or household member proves that he or she has satisfied the obligation to file the tax return and provides a transcript or copy of the return.

(ii) *Determining the sufficiency of an affidavit of support.* The sufficiency of

§213a.2

8 CFR Ch. I (1–13 Edition)

an affidavit of support shall be determined in accordance with this paragraph.

(A) *Income.* The sponsor must first calculate the total income attributable to the sponsor under paragraph (c)(2)(i)(C) of this section for the year in which the intending immigrant filed the application for an immigrant visa or adjustment of status.

(B) *Number of persons to be supported.* The sponsor must then determine his or her household size as defined in 8 CFR 213a.1.

(C) *Sufficiency of income.* Except as provided in this paragraph, or in paragraph (a)(1)(v)(B) of this section, the sponsor's affidavit of support shall be considered sufficient to satisfy the requirements of section 213A of the Act and this section if the reasonably expected household income for the year in which the intending immigrant filed the application for an immigrant visa or adjustment of status, calculated under paragraph (c)(2)(iii)(A) of this section, would equal at least 125 percent of the Federal poverty line for the sponsor's household size as defined in 8 CFR 213a.1, under the Poverty Guidelines in effect when the intending immigrant filed the application for an immigrant visa or for adjustment of status, except that the sponsor's income need only equal at least 100 percent of the Federal poverty line for the sponsor's household size, if the sponsor is on active duty (other than for training) in the Armed Forces of the United States and the intending immigrant is the sponsor's spouse or child. The sponsor's household income for the year in which the intending immigrant filed the application for an immigrant visa or adjustment of status shall be given the greatest evidentiary weight; any tax return and other information relating to the sponsor's financial history will serve as evidence tending to show whether the sponsor is likely to be able to maintain his or her income in the future. If the projected household income for the year in which the intending immigrant filed the application for an immigrant visa or adjustment of status meets the applicable income threshold, the affidavit of support may be held to be insufficient on the basis of the household income but only if, on

the basis of specific facts, including a material change in employment or income history of the sponsor, substitute sponsor, joint sponsor or household member, the number of aliens included in affidavit of support that the sponsor has signed but that have not yet entered into force in accordance with paragraph (e) of this section, or other relevant facts, it is reasonable to infer that the sponsor will not be able to maintain his or her household income at a level sufficient to meet his or her support obligations.

(iii) *Inability to meet income requirement.* (A) If the sponsor is unable to meet the minimum income requirement in paragraph (c)(2)(iii) of this section, the intending immigrant is inadmissible under section 212(a)(4) of the Act unless:

(1) The sponsor, the intending immigrant or both, can meet the significant assets provision of paragraph (c)(2)(iv)(B) of this section; or

(2) A joint sponsor executes a separate affidavit of support.

(B) *Significant assets.* The sponsor may submit evidence of the sponsor's ownership of significant assets, such as savings accounts, stocks, bonds, certificates of deposit, real estate, or other assets. An intending immigrant may submit evidence of the intending immigrant's assets as a part of the affidavit of support, even if the intending immigrant is not required to sign an affidavit of support attachment. The assets of any person who has signed an affidavit of support attachment may also be considered in determining whether the assets are sufficient to meet this requirement. To qualify as "significant assets" the combined cash value of all the assets (the total value of the assets less any offsetting liabilities) must exceed:

(1) If the intending immigrant is the spouse or child of a United States citizen (and the child has reached his or her 18th birthday), three times the difference between the sponsor's household income and the Federal poverty line for the sponsor's household size (including all immigrants sponsored in any affidavit of support in force or submitted under this section);

(2) If the intending immigrant is an alien orphan who will be adopted in the

United States after the alien orphan acquires permanent residence (or in whose case the parents will need to seek a formal recognition of a foreign adoption under the law of the State of the intending immigrant's proposed residence because at least one of the parents did not see the child before or during the adoption), and who will, as a result of the adoption or formal recognition of the foreign adoption, acquire citizenship under section 320 of the Act, the difference between the sponsor's household income and the Federal poverty line for the sponsor's household size (including all immigrants sponsored in any affidavit of support in force or submitted under this section);

(3) In all other cases, five times the difference between the sponsor's household income and the Federal poverty line for the sponsor's household size (including all immigrants sponsored in any affidavit of support in force or submitted under this section).

(C) *Joint sponsor.* A joint sponsor must execute a separate affidavit of support on behalf of the intending immigrant(s) and be willing to accept joint and several liabilities with the sponsor or substitute sponsor. A joint sponsor must meet all the eligibility requirements under paragraph (c)(1) of this section, except that the joint sponsor is not required to file a visa petition on behalf of the intending immigrant. The joint sponsor must demonstrate his or her ability to support the intending immigrant in the manner specified in paragraph (c)(2) of this section. A joint sponsor's household income must meet or exceed the income requirement in paragraph (c)(2)(iii) of this section unless the joint sponsor can demonstrate significant assets as provided in paragraph (c)(2)(iv)(A) of this section. The joint sponsor's household income must equal at least 125 percent of the Poverty Guidelines for the joint sponsor's household size, unless the joint sponsor is on active duty in the Armed Forces and the intending immigrant is the joint sponsor's spouse or child, in which case the joint sponsor's household income is sufficient if it equals at least 100 percent of the Poverty Guidelines for the joint sponsor's household size. An intending im-

migrant may not have more than one joint sponsor, but, if the joint sponsor's household income is not sufficient to meet the income requirement with respect to the principal intending immigrant, any spouse and all the children who, under section 203(d) of the Act, seek to accompany the principal intending immigrant, then the joint sponsor may specify on the affidavit that it is submitted only on behalf of the principal intending immigrant and those accompanying family members specifically listed on the affidavit. The remaining accompanying family members will then be inadmissible under section 212(a)(4) of the Act unless a second joint sponsor submits an affidavit(s) on behalf of all the remaining family members who seek to accompany the principal intending immigrant and who are not included in the first joint sponsor's affidavit. There may not be more than two joint sponsors for the family group consisting of the principal intending immigrant and the accompanying spouse and children.

(D) *Substitute sponsor.* In a family-sponsored case, if the visa petitioner dies after approval of the visa petition, but the U.S. Citizenship and Immigration Services determines, under 8 CFR 205.1(a)(3)(i)(C), that for humanitarian reasons it would not be appropriate to revoke approval of the visa petition, then a substitute sponsor, as defined in 8 CFR 213a.1, may sign the an affidavit of support. The substitute sponsor must meet all the requirements of this section that would have applied to the visa petitioner, had the visa petitioner survived and been the sponsor. The substitute sponsor's household income must equal at least 125% of the Poverty Guidelines for the substitute sponsor's household size, unless the intending immigrant is the substitute sponsor's spouse or child and the substitute sponsor is on active duty in the Armed Forces (other than active duty for training), in which case the substitute sponsor's household income is sufficient if it equals at least 100% of the Poverty Guidelines for the substitute sponsor's household size. If the substitute sponsor's household income is not sufficient to meet the requirements of section 213A(a)(f)(1)(E) of the Act and paragraph (c)(2) of this section, the

§ 213a.2

8 CFR Ch. I (1–1–13 Edition)

alien will be inadmissible unless a joint sponsor signs an affidavit of support.

(iv) *Remaining inadmissibility on public charge grounds.* Notwithstanding the filing of a sufficient affidavit of support under section 213A of the Act and this section, an alien may be found to be inadmissible under section 212(a)(4) of the Act if the alien's case includes evidence of specific facts that, when considered in light of section 212(a)(4)(B) of the Act, support a reasonable inference that the alien is likely at any time to become a public charge.

(v) *Verification of employment, income, and assets.* The Federal Government may pursue verification of any information provided on or with an affidavit of support, including information on employment, income, or assets, with the employer, financial or other institutions, the Internal Revenue Service, or the Social Security Administration. To facilitate this verification process, the sponsor, joint sponsor, substitute sponsor, or household member must sign and submit any necessary waiver form when directed to do so by the immigration officer, immigration judge, or Department of State officer who has jurisdiction to adjudicate the case to which the affidavit of support or an affidavit of support attachment relates. A sponsor's, substitute sponsor's, joint sponsor's, or household member's failure or refusal to sign any waiver needed to verify the information when directed to do so constitutes a withdrawal of the affidavit of support or an affidavit of support attachment, so that, in adjudicating the intending immigrant's application for an immigrant visa or adjustment of status, the affidavit of support or an affidavit of support attachment will be deemed not to have been filed.

(vi) *Effect of fraud or material concealment or misrepresentation.* An affidavit of support or an affidavit of support attachment is insufficient to satisfy the requirements of section 213A of the Act and this part, and the affidavit of support shall be found insufficient to establish that the intending immigrant is not likely to become a public charge, if the Department of State officer, immigration officer or immigration judge finds that an affidavit of support or an

affidavit of support attachment is forged, counterfeited, or otherwise falsely executed, or if the affidavit of support or an affidavit of support attachment conceals or misrepresents facts concerning household size, household income, employment history, or any other material fact. Any person who knowingly participated in the forgery, counterfeiting, or false production of an affidavit of support or an affidavit of support attachment, or in any concealment or misrepresentation of any material fact, may be subject to a civil penalty under section 274C of the Act, to criminal prosecution, or to both, to the extent permitted by law. If the person is an alien, the person may also be subject to removal from the United States.

(d) *Legal effect of affidavit of support.* Execution of an affidavit of support under this section creates a contract between the sponsor and the U.S. Government for the benefit of the sponsored immigrant, and of any Federal, State, or local governmental agency or private entity that administers any means-tested public benefits program. The sponsored immigrant, or any Federal, State, or local governmental agency or private entity that provides any means-tested public benefit to the sponsored immigrant after the sponsored immigrant acquires permanent resident status, may seek enforcement of the sponsor's obligations through an appropriate civil action.

(e) *Commencement and termination of support obligation.* (1) With respect to any intending immigrant, the support obligation and change of address obligation imposed on a sponsor, substitute sponsor, or joint sponsor under an affidavit of support, and any household member's support obligation under an affidavit of support attachment, all begin when the immigration officer or the immigration judge grants the intending immigrant's application for admission as an immigrant or for adjustment of status on the basis of an application for admission or adjustment that included the affidavit of support or an affidavit of support attachment. Any person completing and submitting an affidavit of support as a joint sponsor or an affidavit of support attachment as a household member is

Department of Homeland Security

§ 213a.2

not bound to any obligations under section 213A of the Act if, notwithstanding his or her signing of an affidavit of support or an affidavit of support attachment, the Department of State officer (in deciding an application for an immigrant visa) or the immigration officer or immigration judge (in deciding an application for admission or adjustment of status) includes in the decision a specific finding that the sponsor or substitute sponsor's own household income is sufficient to meet the income requirements under section 213A of the Act.

(2)(i) The support obligation and the change of address reporting requirement imposed on a sponsor, substitute sponsor and joint sponsor under an affidavit of support, and any household member's support obligation under an affidavit of support attachment, all terminate by operation of law when the sponsored immigrant:

(A) Becomes a citizen of the United States;

(B) Has worked, or can be credited with, 40 qualifying quarters of coverage under title II of the Social Security Act, 42 U.S.C. 401, *et seq.*, provided that the sponsored immigrant is not credited with any quarter beginning after December 31, 1996, during which the sponsored immigrant receives or received any Federal means-tested public benefit;

(C) Ceases to hold the status of an alien lawfully admitted for permanent residence and departs the United States (if the sponsored immigrant has not abandoned permanent resident status, executing the form designated by USCIS for recording such action this provision will apply only if the sponsored immigrant is found in a removal proceeding to have abandoned that status while abroad);

(D) Obtains in a removal proceeding a new grant of adjustment of status as relief from removal (in this case, if the sponsored immigrant is still subject to the affidavit of support requirement under this part, then any individual(s) who signed an affidavit of support or an affidavit of support attachment in relation to the new adjustment application will be subject to the obligations of this part, rather than those who signed an affidavit of support or

an affidavit of support attachment in relation to an earlier grant of admission as an immigrant or of adjustment of status); or

(E) Dies.

(ii) The support obligation under an affidavit of support also terminates if the sponsor, substitute sponsor or joint sponsor dies. A household member's obligation under an affidavit of support attachment terminates when the household member dies. The death of one person who had a support obligation under an affidavit of support or an affidavit of support attachment does not terminate the support obligation of any other sponsor, substitute sponsor, joint sponsor, or household member with respect to the same sponsored immigrant.

(3) The termination of the sponsor's, substitute sponsor's, or joint sponsor's obligations under an affidavit of support or of a household member's obligations under an affidavit of support attachment does not relieve the sponsor, substitute sponsor, joint sponsor, or household member (or their respective estates) of any reimbursement obligation under section 213A(b) of the Act and this section that accrued before the support obligation terminated.

(f) *Withdrawal of affidavit of support and any required attachments*. (1) In an immigrant visa case, once the sponsor, substitute sponsor, joint sponsor, household member, or intending immigrant has presented a signed affidavit of support and any required attachments to a Department of State officer, the sponsor, substitute sponsor, joint sponsor, or household member may disavow his or her agreement to act as sponsor, substitute sponsor, joint sponsor, or household member if he or she does so in writing and submits the document to the Department of State officer before the actual issuance of an immigrant visa to the intending immigrant. Once the intending immigrant has obtained an immigrant visa, a sponsor, substitute sponsor, joint sponsor, or household member cannot disavow his or her agreement to act as a sponsor, joint sponsor, or household member unless the person or entity who filed the visa petition withdraws the visa petition in writing, as specified in 8 CFR 205.1(a)(3)(i)(A) or 8 CFR

§213a.3

205.1(a)(3)(iii)(C), and also notifies the Department of State officer who issued the visa of the withdrawal of the petition.

(2) In an adjustment of status case, once the sponsor, substitute sponsor, joint sponsor, household member, or intending immigrant has presented a signed affidavit of support and any required attachments to an immigration officer or immigration judge, the sponsor, substitute sponsor, joint sponsor, or household member may disavow his or her agreement to act as sponsor, substitute sponsor, joint sponsor, or household member only if he or she does so in writing and submits the document to the immigration officer or immigration judge before the decision on the adjustment application.

(g) *Aliens who accompany or follow-to-join a principal intending immigrant.* (1) To avoid inadmissibility under section 212(a)(4) of the Act, an alien who applies for an immigrant visa, admission, or adjustment of status as an alien who is accompanying, as defined in 22 CFR 40.1, a principal intending immigrant must submit clear and true photocopies of any relevant affidavit(s) and attachments filed on behalf of the principal intending immigrant.

(2)(i) To avoid inadmissibility under section 212(a)(4) of the Act, an alien who applies for an immigrant visa, admission, or adjustment of status as an alien who is following-to-join a principal intending immigrant must submit a new affidavit(s) of support, together with all documents or other evidence necessary to prove that the new affidavits comply with the requirements of section 213A of the Act and 8 CFR part 213a.

(ii) When paragraph (g)(2)(i) of this section requires the filing of a new affidavit for an alien who seeks to follow-to-join a principal sponsored immigrant, the same sponsor who filed the visa petition and affidavit of support for the principal sponsored immigrant must file the new affidavit on behalf of the alien seeking to follow-to-join. If that person has died, then the alien seeking to follow-to-join is inadmissible unless a substitute sponsor, as defined by 8 CFR 213a.1, signs a new affidavit that meets the requirements of this section. Persons other than the

8 CFR Ch. I (1–1–13 Edition)

person or persons who signed the original joint affidavits on behalf of the principal sponsored immigrant may sign a new joint affidavit on behalf of an alien who seeks to follow-to-join a principal sponsored immigrant.

(iii) If a joint sponsor is needed in the case of an alien who seeks to follow-to-join a principal sponsored immigrant, and the principal sponsored immigrant also required a joint sponsor when the principal sponsored immigrant immigrated, that same person may, but is not required to be, the joint sponsor for the alien who seeks to follow-to-join the principal sponsored immigrant.

[62 FR 54352, Oct. 20, 1997; 62 FR 60122, Nov. 6, 1997; 62 FR 64048, Dec. 3, 1997; 71 FR 35750, June 21, 2006; 72 FR 56867, Oct. 4, 2007; 76 FR 53788, Aug. 29, 2011; 76 FR 73477, Nov. 29, 2011]

§213a.3 Change of address.

(a) *Submission of address change.* (1) *Filing requirements.* If the address of a sponsor (including a substitute sponsor or joint sponsor) changes while the sponsor's support obligation is in effect, the sponsor shall file a change of address notice within 30 days, in a manner as prescribed by USCIS on its address change form instructions.

(2) *Proof of mailing.* USCIS will accept a photocopy of the change of address form together with proof of the form's delivery to USCIS as evidence that the sponsor has complied with this requirement.

(3) *Electronic notices.* USCIS will provide the sponsor with a receipt notice for an address change.

(4) *Alien sponsors.* If the sponsor is an alien, the sponsor must still comply with the requirements of 8 CFR 265.1 to notify USCIS of his or her change of address.

(b) *Civil penalty.* If the sponsor fails to give notice in accordance with paragraph (a) of this section, DHS may impose on the sponsor a civil penalty in an amount within the penalty range established in section 213A(d)(2)(A) of the Act. Except, if the sponsor, knowing that the sponsored immigrant has received any means-tested public benefit, fails to give notice in accordance with paragraph (a) of this section, DHS may impose on the sponsor a civil penalty in an amount within the penalty range established in section 213A(d)(2)(B) of