

Understanding the Affidavit of Support

Key Aspects and Legal Framework

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Overview - Affidavit of Support

- **Origin:** Created under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)
- **Purpose:** Part of the public charge ground of inadmissibility framework
- Pub. L. No. 104–208, 110 Stat. 3009 (1996)

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Statutory Law – Public Charge

Immigration and Nationality Act (INA):Section 212(a)(4)

An individual seeking admission to the U.S. or seeking to adjust status is inadmissible if he/she is likely at any time to become a public charge.

At a minimum, agencies must consider the alien's age; health; family status; assets, resources, and financial status; and education and skills.” The agencies may also consider an Affidavit of Support Under Section 213A of the INA submitted on the noncitizen's behalf when such is required.

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Former INS Regulatory Law (Outgoing) - Public Charge

- May 26, 1999, *Field Guidance on Deportability and Inadmissibility on Public Charge Grounds (1999 Interim Field Guidance)* 64 FR 28689 [99-13202.pdf \(govinfo.gov\)](https://www.govinfo.gov/procurement/documents/cfr/title-8/chapter-1/subchapter-3/part-212/section-212.13202.pdf)
- Applies only to immigrant applications and petitions filed prior to December 23, 2022

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USCIS Regulatory Law (12/23/2022) – Public Charge

2022 Final rule on Public Charge Grounds of Inadmissibility amending the 1999 Field Guidance.

See, 87 FR 55472. [Federal Register :: Public Charge Ground of Inadmissibility](#) Effective 12/23/22

“This rule implements the public charge ground of inadmissibility ... in a manner that will be consistent with congressional direction; that will be clear and comprehensible for officers as well as for noncitizens and their families; and that will lead to fair and consistent adjudications, thereby mitigating the risk of unequal treatment of similarly situated individuals.”

8 CFR § 213a: Detailed regulations about the Affidavit of Support requirements.

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DOS Regulation and Guidance - Public Charge

- **Foreign Affairs Manual on Public Charge at 9 FAM § 302.8**
– based on pre-2018 policy
<https://fam.state.gov/FAM/09FAM/09FAM030208.html>
- Properly filed, non-fraudulent Form I-864 if required is primary consideration weighed in Totality of Circumstances evaluation
 - 9 FAM § 302.8-2(B)(3)

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[Immigration Practice Essentials: Adjustments, Consular Processing, and Affidavits of Support](#)

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