

# Understanding the Affidavit of Support

## Key Aspects and Legal Framework

Terry Cody  
Catholic Charities Galveston-Houston  
St. Frances Cabrini Center

1

## 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)

2

# 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.

## 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.gpo.gov/fdsys/pkg/FR-1999-05-26/pdf/99-13202.pdf)
- Applies only to immigrant applications and petitions filed prior to December 23, 2022

# 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.

5

## 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)

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Affidavits of Support

Also available as part of the eCourse

[2023 eConference on Immigration and Nationality Law](#)

First appeared as part of the conference materials for the  
47<sup>th</sup> Annual Conference on Immigration and Nationality Law session  
"Affidavits of Support"