

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/dpo/pubs/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 \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Affidavits of Support

Also available as part of the eCourse

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

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