

## CHAPTER THREE

### OVERVIEW OF COMMON GROUNDS OF INADMISSIBILITY AND DEPORTABILITY

#### I. CONCEPTS OF INADMISSIBILITY AND DEPORTABILITY

The grounds of inadmissibility, found at INA § 212(a), constitute the reasons an alien may be refused admission to the U.S. at the border, or may be removed after entering the U.S. without inspection. These inadmissibility grounds apply both at the border and in removal proceedings for persons seeking admission. Establishing admissibility (which means showing that one is not inadmissible) is also a requirement for many immigration applications, such as adjustment of status.

The grounds of deportability are contained in INA § 237(a). These are the grounds for the USCIS and the immigration judge to find that a person who entered the U.S. with inspection must be removed from the United States. We will discuss the grounds of deportability and inadmissibility together in the following section, since many grounds of deportability have a parallel or similar ground of inadmissibility.

An alien must have been lawfully “admitted” to be subject to the grounds of deportability. Otherwise, an alien is subject to the grounds of inadmissibility. An “admission” is an entry to the United States that is lawful, after inspection. A lawful admission is one in which an alien physically presents himself or herself for inspection, and did not make a false claim to U.S. citizenship. Persons who entered the United States without inspection are not considered to have been admitted, even if they have resided in the United States for years. Under the current law, they are considered to be seeking admission, and are subject to the grounds of inadmissibility.

*Example:* Kristina came to the United States on a B-2 visa and remained longer than her authorized stay. If Kristina is arrested by DHS she will be charged with a ground of deportability because she is in the United States unlawfully after an inspection and admission by a DHS officer.

*Example:* Lorena entered the United States without papers in February 2005. Even though she has lived in the United States for nine years, if she is placed in removal proceedings, Lorena will be charged with a ground of inadmissibility because she was never inspected by DHS when she entered the United States.

#### II. SUMMARY OF INADMISSIBILITY AND DEPORTABILITY GROUNDS

There are many similarities between the grounds of inadmissibility and the grounds of deportability. For example, a conviction for many types of crimes will have both inadmissibility and deportability consequences. Other immigration law violations, however, may constitute a ground of inadmissibility or deportability, but not both. From the following list of inadmissibility and deportability grounds, you can see that some, but not all, categories of

immigration law violations are common to both concepts.

### Deportability Categories

- Inadmissibility at the time of entry or adjustment of status or violation of status
- Criminal grounds
- Failure to register and falsification of documents
- Security related grounds
- Public charge
- Unlawful voters

### Inadmissibility Categories

- Health-related grounds
- Crime-related grounds
- National security grounds
- Public charge
- Labor protection grounds
- Fraud or other immigration violations
- Documentation requirements
- Grounds relating to military service in the United States
- Prior removal orders, unlawful presence
- Miscellaneous grounds

Some of these grounds can be waived in limited circumstances, depending on the specific statutory provision. Many waivers require the alien to have certain LPR or USC relatives to qualify. Such waivers are only mentioned in overview in this introductory training, and are covered in more detail in other trainings, including Bars and Waivers.

## **III. REVIEW OF SELECTED GROUNDS OF INADMISSIBILITY AND DEPORTABILITY**

The inadmissibility and deportability grounds discussed below represent the most common issues you are likely to encounter in preparing family-based immigration applications.

### **A. INADMISSIBILITY AND DEPORTABILITY**

#### **1. Health Grounds, INA § 212(a)(1)**

**Communicable diseases, INA § 212(a)(1)(A)(i)** - The Department of Health and Human Services determines which diseases render an alien inadmissible. The grounds of inadmissibility include aliens who have tuberculosis, and those who have diseases such as gonorrhea and syphilis. Note that as of October 29, 2009, HIV is no longer a health-related ground of inadmissibility. There is a waiver for the communicable diseases ground under INA § 212(g)(1) if an alien has certain U.S. citizen or LPR relatives.

**Vaccinations, INA § 212(a)(1)(A)(ii)** - The required vaccinations include mumps, measles, rubella, polio, tetanus, diphtheria toxoids, pertussis, influenza type B, hepatitis B, varicella, haemophilus influenza type B, and pneumococcal vaccines. The requirement can be waived under INA § 212(g)(2) if the civil surgeon certifies that it is medically inappropriate, or if the vaccination is contrary to religious or moral beliefs.

**Mental or physical disorder, INA § 212(a)(1)(A)(iii)** - Disorders that may pose a danger to property or persons, including alcoholism. This ground may be waived if the person posts a bond.

**Drug addicts/abusers are inadmissible under INA § 212(a)(1)(A)(iv).**

## **2. Alien smuggling, INA § 212(a)(6)(E), § 237(a)(1)(E)**

Immigrants and nonimmigrants are inadmissible from the U.S. if they have at any time knowingly encouraged, induced, assisted, abetted or aided any other alien to enter the U.S. illegally. There is no requirement that the smuggling have been for gain. Individuals who qualified for Family Unity and who are applying for either Family Unity or an immigrant visa under the immediate relative or the second preference family visa provisions of the INA are not subject to this ground. Information about the Family Unity program is contained in the appendix to this chapter. Smuggling is also a ground of deportability under INA § 237(a)(1)(E).

Congress created a waiver to ameliorate the possible harsh effects of the smuggling ground of inadmissibility. However, only two groups of aliens can take advantage of this waiver: (1) LPRs who are returning from a visit abroad, and (2) aliens seeking permanent residence as immediate relatives of U.S. citizens or in the first, second, and third family preference categories (*not* the fourth preference). Even for these individuals, the waiver is available only if the alien they encouraged or assisted to enter illegally was, at the time of the smuggling, his or her “spouse, parent, son or daughter (and no other individual).” The attorney general is authorized to grant these waivers for humanitarian purposes, to assure family unity, and when it is in the public interest. It should also be noted that any conviction for smuggling is now an “aggravated felony,” unless the smuggling was done only to assist a spouse, parent, son or daughter.

*Example: Gloria came to the United States with her six-year-old daughter, Nina. They entered together without inspection. Even though Nina is Gloria’s child, USCIS is likely to view this as smuggling and require Gloria to file a waiver.*

## **3. Fraud and False Claim of U.S. Citizenship, INA § 212(a)(6)(C)**

This ground of inadmissibility applies if by fraud or willful misrepresentation of a material fact an alien sought or seeks admission to the United States or to procure an immigration benefit. The fraud must have been to a DHS official.

*Example: When Leticia applied for a tourist visa at the United States consulate in San Salvador, she falsely told the consul that she was married with two children. Leticia’s misrepresentation may be viewed as meaningful because she was attempting to show non-immigrant intent - that she would return to El Salvador -*

*by lying about her family ties there.*

The only waiver available under INA § 212(i) is for an applicant who has a USC or LPR spouse or parent who will suffer extreme hardship.

*Example: If Leticia's only USC or LPR family is the USC brother who is petitioning for her, Leticia will not be eligible for a waiver.*

The false claim of U.S. citizenship ground of inadmissibility is broader and harsher. It applies to any alien who, on or after September 30, 1996, falsely represents himself or herself to be a citizen of the United States for any purpose or benefit under the INA *or any federal or state law*. This could include false claims of citizenship to a DHS agent for purposes of gaining admission, as well as false claims to citizenship upon registering to vote, or applying for a driver's license. There is no waiver available for this ground. A false claim to U.S. citizenship made by a person under age 18 will not trigger this ground of inadmissibility where the individual can establish that she or he lacked the capacity to understand the nature and consequences of the false claim.

#### **4. Document Fraud, INA §§ 212(a)(6)(F), 237(a)(3)(C)**

This is both a ground of inadmissibility and deportability. This is very different from visa fraud and is defined in INA § 274C. There is a separate civil hearing and penalty process for aliens charged with document fraud, and only an alien subject to a "final order" under this process is inadmissible or deportable.

Document fraud is very broad under § 274C, and relates to the misuse of documents and applications. It is unlawful for a person to forge or alter any document in an effort to obtain an immigration benefit or to use, attempt to use, possess, obtain, accept, receive or provide any such document to satisfy any requirement of the INA. Under the 1996 Act, the definition also includes preparing or assisting another in filing an application for any immigration benefit with knowledge or reckless disregard that the statements in it were false. It also includes putting false statements on a valid USCIS application or form, such as an I-9, or attaching documents that do not relate to the applicant.

Most persons who were subject to final orders of document fraud have now had those orders vacated. Those ordered deported based, in whole or in part, on a document fraud order will have the right to reopen their cases due to settlement of a nationwide class action. The court in *Walters v Reno* found that the notice and hearing process that INS set up to implement the document fraud provisions was unfair and confusing. However, the DHS is now authorized to enforce the provisions of INA § 274C civil document fraud.

Note that one of the positive things changed by the 1996 Act is that there is now also a waiver for document fraud, though the waiver is limited to LPRs and people immigrating through family members who committed the offense to help or support their spouse or child. INA § 237(a)(3)(C)(ii).

## 5. Grounds Related to Immigration Violations

**Present without admission, INA § 212(a)(6)(A)** - Persons who are unlawfully present in the U.S. without admission or parole are inadmissible. This ground may be waived through INA § 245(i) or circumvented by consular processing.

*Example: Dalia entered the United States without papers in 1998. This makes her “present in the United States without admission.” If Dalia has a USC or LPR spouse who petitioned for her before April 30, 2001, Dalia can adjust status under 245(i) even though she is inadmissible under INA § 212 (a)(6)(A).*

There is an exception for battered spouses and children if they can show a substantial connection between the battery and their unlawful status in the U.S.

**Three/Ten-Year Bar, INA § 212(a)(9)(B)** - One of the most significant immigration violations results in a three- or ten-year bar for those unlawfully present who depart and then apply for admission or re-enter the United States. This has two provisions:

- 180-day presence/three-year bar - aliens who are unlawfully present after April 1, 1997 for more than 180 days but less than one year, who depart the U.S. voluntarily (not in proceedings) and then seek admission are barred from admission for three years from date of departure.
- One-year presence/ten-year bar - aliens who are unlawfully present after April 1, 1997 for one year or more, who depart the U.S. and then seek admission are barred from admission to the U.S. for ten years from date of departure.

Family Waiver: there is a discretionary waiver for an alien who is the spouse, son or daughter of a U.S. citizen or LPR, if extreme hardship would be caused to that spouse or parent.

Under this ground of inadmissibility, “unlawfully present” means that the alien is present after overstaying an authorized period of stay, or without being admitted or paroled. For aliens who entered with a nonimmigrant visa but who subsequently violate the terms of the visa, such as by working without authorization, unlawful presence begins only after a determination by the USCIS or immigration judge that the alien violated status. For purposes of this ground, the USCIS considers the following classes of aliens to be present in the U.S. pursuant to a period of authorized stay:

- Aliens with properly filed applications for adjustment of status under INA § 245(a) and (i), including aliens in removal proceedings to renew adjustment applications that were denied by the USCIS, but not including aliens who first apply for adjustment in removal proceedings
- Aliens admitted to the United States as refugees under INA § 207
- Aliens granted asylum under INA § 208
- Aliens granted withholding of deportation/removal under INA § 241(b)(3) or its predecessor, INA § 243(h)
- Aliens granted relief under the Convention Against Torture Act

- Aliens under a current grant of deferred enforced departure (DED) pursuant to an order issued by the President (of the United States)
- Aliens under a current grant of temporary protected status (TPS)
- Cuban/Haitian entrants under Public Law 99-603 section 202(b)
- Aliens granted voluntary departure, during the period of time allowed
- Aliens who have filed an application for legalization under either of the two amnesty programs, but excluding “late amnesty” applicants
- Applicants for asylum during the pendency of the application, provided the alien did not work without employment authorization
- Aliens under 18 years of age
- Aliens who have been granted Family Unity, during the authorized period
- Battered spouses and children, provided there is a substantial connection between the abuse and the unlawful presence
- Applicants for relief pursuant to the Nicaraguan Adjustment and Central American Relief Act (NACARA)
- Conditional resident aliens who have had their status terminated by the USCIS but who have appealed that determination administratively, through the appeals process
- Nonimmigrants who have made a timely application for an extension of stay or change of status
- Persons granted Deferred Action for Childhood Arrivals (DACA)

Aliens *not* considered to be in a period of authorized stay under this ground would be unlawfully present.

***Example:** Ninetta entered the United States on a B-2 visa on December 20, 2008 and she was admitted to the United States with an authorized stay of six months, until June 20, 2009. Ninetta has been accruing unlawful presence in the United States since June 21, 2009. Ninetta’s daughter Inez, age 12, came to the United States with Ninetta. Inez has not accrued any unlawful presence under 212(a)(9)(B) because she is under age 18.*

***Example:** Darcy entered the U.S. without inspection in January 2005, and all of the time she spent in the United States was unlawful. Darcy’s U.S. citizen daughter turned 21 in May and filed a visa petition for Darcy, which has just been approved. If Darcy leaves the United States to consular process, she will be subject to the 10-year bar and she will not be eligible for a waiver because she does not have a qualifying family relationship.*

For purposes of this ground, the USCIS considers the following classes of aliens to be unlawfully present in the United States:

- Aliens under an order of supervision (pending removal)
- Aliens with pending applications for cancellation of removal
- Aliens with pending applications for withholding of removal
- Asylum applicants who have worked without employment authorization
- Aliens in removal or deportation proceedings, unless found to be not deportable (if I-94 expires while in proceedings, unlawful presence begins on date of deportation order; if

granted relief from deportation by an immigration judge, unlawful presence ends on date of order)

- Aliens present pursuant to pending federal court litigation, including late amnesty cases
- Aliens who file a timely application for extension or change of status

**Permanent Bar For Unlawful Presence After Previous Immigration Violations, INA § 212(a)(9)(C)** – This inadmissibility ground applies to aliens who were previously unlawfully present for an aggregate period of one year or more who leave the United States and then reenter or attempt to reenter illegally after April 1, 1998. This ground also applies to an alien who was deported or removed and who enters or attempts to reenter illegally after April 1, 1997.

There is no waiver. However, these persons can apply for permission to reenter (Form I-212) after they have remained outside the United States for ten years. According to the current USCIS interpretation, only time spent in the U.S. after April 1, 1997 will count in calculating the unlawful presence.

***Example:** Luis entered the United States from El Salvador with a tourist visa on March 18, 2003. He was authorized to stay for 60 days, but he stayed for 6 months. In January 2007, Luis returned to the United States, this time without inspection. He returned to El Salvador in October 2007, and came back to the U.S., again without inspection, in October 2009. Luis is inadmissible - and ineligible for residency through either consular processing or adjustment of status - because he is subject to the permanent bar of 212(a)(9)(C). The bar applies because Luis has been unlawfully present for an aggregate period of one year or more since April 1, 1997 and then reentered the United States unlawfully.*

**Past Removal, INA § 212(a)(9)(A)(i) and (ii)** - The 1996 Act provides that aliens ordered removed at the border based on the grounds of inadmissibility (expedited removal or removal initiated at the person's arrival in the United States) are inadmissible for 5 years after their removal. INA § 212(a)(9)(A)(i). Other aliens who are removed for being inadmissible or deportable face a ten-year bar. INA § 212(a)(9)(A)(ii). The USCIS can waive these bars by approving an application for consent to reapply. INA § 212(a)(9)(A)(iii).

***Example:** Pierre was removed for being deportable in March 2005, when he violated his student visa by working without authorization. Pierre's priority date to immigrate as the unmarried son of a permanent resident is now current. He will need a waiver to immigrate because he is otherwise inadmissible for ten years after his removal.*

The same section also provides that the bar increases to 20 years for a second removal, and that the bar is permanent for aliens removed as aggravated felons.

**Failure to Attend Removal Proceedings without Reasonable Cause, INA § 212(a)(6)(B)** - This bars the alien from admission for five years subsequent to a departure or removal.

## Reinstatement of Removal

Under INA § 241(a)(5), DHS may reinstate a prior removal order against someone who was removed and is now in the U.S. after entering illegally. Based on this provision, if DHS finds that an alien has reentered the United States illegally after having departed under an order of removal, the prior order is “reinstated” from its original date and the alien is not eligible for most forms of relief and shall be removed under the prior order. DHS has interpreted this section to apply to orders of deportation/removal and subsequent reentries regardless of when they occurred. The Supreme Court recently upheld this retroactive application of the law.

*Example: Lucia was removed for being inadmissible in January 2006. She later re-entered illegally and married a USC. Lucia is subject to reinstatement of removal. If she applies for adjustment of status, she may be arrested by DHS and processed for reinstatement of her prior removal order.*

### 7. Criminal Grounds, INA §§ 212(a)(2), 237(a)(2)

Over the past several years, Congress has repeatedly amended the law to create new immigration law consequences for criminal offenses, making this area of law increasingly complex and harsh in its impact on immigrants. In the inadmissibility context, INA § 212(a)(2) includes several categories of offenses, including bars to admission for an alien who admits committing certain types of crimes for which she/he has not been charged. On the deportability side of the law, INA § 237(a)(2) also includes multiple categories of offenses, including deportability for an “aggravated felony offense,” which includes 21 types of crimes. Frequently encountered categories of offenses triggering inadmissibility and deportability consequences are listed below:

**INA § 212(a)(2) – Crime Based Inadmissibility.** These include the following:

- General crimes (crimes of moral turpitude; crimes related to controlled substance violations). This includes aliens who admit acts constituting the essential elements of crimes falling within this category.
- Multiple criminal convictions, where there is an aggregate prison sentence of five years or more
- Controlled substance traffickers
- Crimes related to prostitution and commercialized vice
- Aliens involved in serious criminal activity who have asserted immunity from prosecution.

**INA § 237(a)(2) – Crime Based Deportability.** These include the following:

- General crimes – including convictions for crimes of moral turpitude, aggravated felony,



and high speed flight.

- Controlled substance violations
- Firearms offenses
- Miscellaneous crimes (relating to espionage, treason, sedition)
- Crimes relating to domestic violence, stalking and violation of protection orders.

With this background, it is very important to not make casual judgments about the impact of a crime on a possible immigration benefit or on the status of a non-citizen client. All non-citizens may have their immigration status placed at risk by criminal activity, even if they are lawfully residing here. For this reason, personal conclusions like “It doesn’t sound too serious,” or “He only paid a fine, so it’s okay” are not a sound basis for counseling in this area and may compromise a client’s status.

- a. **A crime may have deportation consequences even when no jail time was imposed.**

*Example:* Luca was convicted of possession of 2 pounds of marijuana but was only sentenced to probation because it was her first offense. Luca may be inadmissible under INA § 212(a)(2) or deportable under INA § 237(a)(2).

- b. **A minor crime, like shoplifting, may not have immigration consequences the first time but may lead to deportability if there is a second offense.**

*Example:* Jonah, an LPR since 1998, was convicted in 2007 of shoplifting a sweater from Target. Because of the small value of the sweater and the fact that this was Jonah’s first offense, Jonah was sentenced to 3 months probation and paid a fine. Six months later, Jonah was caught shoplifting a pair of socks from the same store. Jonah’s first conviction did not make him deportable, but now Jonah faces deportability based on convictions for two crimes of moral turpitude.

- c. **The same crime may have different immigration consequences depending on the sentence imposed.**

*Example:* Jack and Jill, LPRs from the UK, were each charged with theft. Judge A sentenced Jack to one year of probation but Judge B, a stricter judge, sentenced Jill to a one-year prison term, which he then suspended, imposing a one-year probation term. Although Jack and Jill had the same conduct and have the same conviction, and neither of them actually spent any time in jail, the one year suspended sentence that Jill received makes her deportable for an aggravated felony.

**d. The same crime and the same sentence may have different immigration consequences depending on the immigration status of the non-citizen.**

*Example: Susana and Francesca, non-citizens from Italy, were each convicted of possession of cocaine and were sentenced to 6 months in jail. Susana, a longtime LPR, is deportable but she will be eligible to seek a waiver. Francesca, married to a USC, is waiting for her adjustment of status interview. The conviction will make her inadmissible and no waiver is available.*

What can you do as a counselor if you are not equipped to analyze the immigration consequences of a crime? You can help your client by doing the following:

- Question all clients carefully about any police contact; this is an area where many individuals are confused by terminology. Some people may misunderstand a reference to “arrest” or “conviction” as only referring to situations where time was spent in jail. Other people may answer that they have never been convicted where they had a court disposition that allowed their record to be erased. For immigration purposes, however, it is important to find out about all police contacts your client had and the outcome of each contact.
- Help the applicant you are assisting determine his or her criminal record by requesting an FBI rapsheet to check on all arrests, and by obtaining court records to determine what charges were actually brought and what outcome resulted from the charges. You can get an FBI arrest report by completing a fingerprint card and sending it with an \$18 money order to FBI, Special Correspondence, 1000 Custer Hollow Road, Clarksburg, WV 26306 with a letter requesting that your client’s records be checked and sent to you.
- Encourage any non-citizen with a criminal record not to apply for any USCIS benefit until s/he can obtain competent legal advice from someone knowledgeable in this field.
- Counsel any immigrant charged with a crime to be sure to get immigration law counseling as well as criminal defense counseling before making a decision about how to plead to the criminal charges. Many criminal defense lawyers are not familiar with the technicalities of the immigration consequences of crimes, and the defense lawyer may not even know that his or her client is a non-citizen.

Where you determine that a non-citizen has a disqualifying conviction, or a conviction that renders the person deportable, encourage consultation with a criminal defense lawyer to see if post-conviction relief to vacate a conviction or modify a sentence may be available to remove the immigration law problem.

**8. Public Charge and Affidavit of Support, INA §§ 212(a)(4), 213A, 237(a)(5)**

**Public charge inadmissibility:** Under INA § 212(a)(4), an alien is inadmissible if he or she is likely to become a public charge. In making this determination, a USCIS or consular officer must consider various factors, including the alien’s age, health, family status, assets and financial resources, and education and skills.

Receipt of public benefits does not necessarily create public charge problems. Only the following benefits are subject to public charge consideration:

- Supplemental Security Income (SSI)
- Cash Assistance from the Temporary Assistance to Needy Families (TANF) program
- State or local cash assistance programs
- Medicaid that is used to support aliens residing in a long-term care institution

In order to be considered a public charge an alien must be “primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance, or institutionalization for long-term care at government expense.” Benefits received by one member of the family will not be attributed to other family members for purposes of public charge determinations. The exception to this rule is where a family solely relies on cash benefits received by another family member.

**Affidavit of Support:** In most family-based immigration cases, and in some employment-based immigration cases where a relative has a “significant” (five percent or more) ownership interest in the petitioning business entity, the petitioner must submit an “affidavit of support” for the intending immigrant. This provision of the law is found at INA § 213A.

Certain family petitions are exempted from this requirement. These include self-petitioning widows and widowers of U.S. citizens; and battered spouses and children immigrating under the Violence Against Women Act. Children who will be deriving citizenship status pursuant to the Child Citizenship Act of 2000 (discussed in Chapter Eight) because they are under 18 and residing with at least one USC parent are exempt from the affidavit of support requirement. Persons applying for residency status under other laws (e.g., Cuban adjustment, diversity visa lottery, special immigrant juveniles) are not subject to the affidavit of support requirement.

Another important exemption applies to those intending immigrants who have already acquired 40 qualifying quarters. A “qualifying quarter” is a legal term relating to a unit of wage that, if earned in most types of employment, counts toward coverage for Social Security benefits. One *earns* up to four qualifying quarters in a calendar year. But the spouse and child may also be *credited* with the quarters earned by the spouse or parent: spouses may be credited with all the quarters earned by the other spouse during marriage, assuming the marriage did not end in divorce; children may be credited with all quarters earned by either or both parents up until the child turns 18. Since the affidavit of support requirements terminate when the sponsored immigrant earns or is credited with 40 qualifying quarters, intending immigrant who demonstrate through Social Security earnings statements that they have already satisfied that requirement do not have to submit an affidavit of support.

Under INA § 213A, an affidavit of support must be filed for the intending immigrant by a “sponsor,” who must be a USC or LPR, at least 18 years old, and domiciled in the U.S. or a territory or possession. The sponsor must show that he or she has the means to maintain an annual income equal to at least 125 percent of the federal poverty income guidelines for his or her household unit, including the intending immigrant. In family-based immigration cases, the petitioner must always be a sponsor and complete an affidavit of support, even if he or she cannot meet the 125 percent requirement.

*Example: Tran is a 1<sup>st</sup> preference beneficiary applying for adjustment of status.*

*His petitioner father Linh Quach is a USC receiving SSI benefits, with an income below 125% of the poverty income guidelines. Linh Quach must still file an affidavit of support for his son.*

The size of the household unit is defined in the regulations at 8 CFR § 213a.1 as including:

- The sponsor
- The sponsor's spouse and children
- All persons who the sponsor claimed as a dependent on his/her most recent tax return
- The intending immigrant and all accompanying family members, and
- Aliens on whose behalf the sponsor has filed prior I-864 affidavits.

In addition, the sponsor may include a "relative" – parent, spouse, sibling, or child/son/daughter – if including them would allow the sponsor to count their income. Make sure that no household member is counted more than once.

***Example:** Linh Quach lives with his two sons, Thien and Tran, and his grandmother. He is petitioning for his wife. Linh Quach's household size is four, including himself, his wife, and his two sons. The grandmother is not part of the household for affidavit of support purposes, even though she lives with Linh Quach.*

The affidavit of support, Form I-864, requires the sponsor to estimate his or her current annual income, indicate income on the last three income tax returns, and include a copy of the past income tax return. The sponsor can also include in the income calculation the income from any household members who are residing with the sponsor, provided they complete a Form I-864A, which is a contract between the sponsor and the household member. The sponsor may also include the income from the intending immigrant, who would not need to complete an I-864A unless other derivative family members are also immigrating. If the intending immigrant is the spouse of the sponsor, that person does not need to be residing with the sponsor. Household members signing an I-864A form do not need to be USCs or LPRs. These household members do not need to have resided with the sponsor for any set period as long as they currently share their principal residence with the sponsor.

***Example:** Linh Quach's son Thien makes \$35,000 as a grade school teacher. If Thien is willing to sign an I-864A form, his income can be included in the affidavit of support filed by his father for Tran. Thien will have to include a copy of his last tax return. It does not matter how long Thien has been living with Linh.*

Significant assets, such as cash, stocks, and real estate, may be combined with the sponsor's income to meet the 125 percent requirement, and these can be assets of the sponsor, other household members who executed an I-864A, or the intending immigrant. The value of the assets must be at least five times the difference between the sponsor's total household income and the appropriate 125 percent of the poverty income guidelines. If the intending immigrant is the sponsor's spouse or child over 18 and the sponsor is a U.S. citizen, the value of the assets must only be three times the shortfall.

**Example:** USC Martin is submitting an affidavit of support in connection with his brother Neil's immigrant visa application. Neil is immigrating with his wife and four children, so Martin must show sufficient income for a household of 6. Under the 2011 poverty guidelines, Martin needs to show an income of at least \$37,487, and Martin only earns \$32,487. Martin is \$5,000 short of this amount; if he can show assets in the amount of \$25,000 – five times the income shortfall – he will be able to satisfy the affidavit of support requirement.

If the petitioning relative cannot meet the affidavit of support requirements, even with household members' income and assets, another person can also submit an affidavit of support if he or she agrees to be jointly and severally liable with the petitioner. The joint sponsor must be either a U.S. citizen, LPR, or national and be domiciled in the United States.

Each intending immigrant – whether a principal beneficiary or derivative – may have only one joint sponsor. But in family-based preference category cases comprised of a principal beneficiary and at least one accompanying derivative, the sponsor may use up to two joint sponsors. The sponsor may apportion the financial burden between the two joint sponsors, so that, for example, one joint sponsor bears responsibility for the principal beneficiary and the second joint sponsor bears responsibility for the derivative. In that situation, the first joint sponsor would include the principal beneficiary as a household member and would bear the financial responsibility for that person, while the second joint sponsor would include the derivative. Each joint sponsor would identify on the I-864 the intending immigrant(s) that he or she is sponsoring and must meet the full 125 percent income requirement; the joint sponsor can't combine income with the petitioner sponsor and his or her household.

**Example:** In the example above, assume that Martin is unemployed and will need to use a joint sponsor. Another brother, Bill, is married and has one child. Bill does not make enough money to sponsor both Neil, Neil's wife, and their four children, since that would total nine people in Bill's household. But Bill can sign an affidavit of support on behalf of Neil and Neil's wife. That would mean that Bill's household totaled five. A second joint sponsor would need to sign another affidavit of support on behalf of the four children. Martin still has to file an affidavit of support because he is the petitioning relative.

Note that the affidavit of support is a binding contract that is legally enforceable against the sponsor by the sponsored immigrant, or any entity that provides a means-tested benefit to the alien. The affidavit of support obligation ends when the sponsored immigrant becomes a citizen of the United States; has worked or can be credited with 40 qualifying quarters of work; ceases to hold the status of LPR and departs the United States; or dies. The sponsor's obligation also terminates if the sponsor dies.

Although the USCIS regulations provide that the I-130 petition terminates automatically with the death of the petitioner, the regulations also allow an exception where the beneficiary establishes that it would be "inappropriate" to revoke the application based on humanitarian factors. Once the I-130 has been reinstated, the intending immigrant is now allowed to submit a substitute affidavit of support from another close relative. The list of family members of the intending immigrant who can act as alternative sponsors in that situation include the following:

spouse, parent, mother-in-law, father-in-law, sibling, child (at least 18 years old), son, daughter, son-in-law, daughter-in-law, sister-in-law, brother-in-law, grandparent, grandchild, or guardian.

**Public Charge Deportability:** The public charge ground of deportability under INA § 237(a)(5) is rarely invoked. To be found deportable under this section, the following factors must be present:

- The receipt of the public benefits must have created a legal debt
- The receipt of benefits must have occurred within five years of the alien's entry and for reasons not arising after entry to the U.S.
- The agency from which the alien received the public benefits must have demanded repayment pursuant to its legal authority, obtained a final judgment, and taken all steps to collect on the judgment
- The alien must have refused to re-pay the debt.