The Form I-864

And the right to indefinite spousal support

Greg McLawsen
Managing attorney



Immigration Support Advocates



Your new client, Anna.



Immigration Support Advocates

We help greencard holders recover support under
the Form I-864, Affidavit of Support

www.i-864.net

Overview:

1. What is the Form I-864?
2. The support duty.
3. The nuts and bolts of enforcement.
4. (Im)possible defenses.
5. An ounce of prevention?



Grounds of “inadmissibility.”

Many flavors of inadmissibility.

1. Health-related grounds.
2. Criminal grounds.
3. Security, etc. grounds.
4. Immigration violators.
5. *Public charge*.

Public charge inadmissibility.

"In general. Any **alien** who, **in the opinion of** the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is **likely at any time to become a public charge is inadmissible."**

Remember the 1990s?



Who is the insurance policy?



American public?



Visa petitioner.

Required in *every* family-based case.*



*Okay not really *every* – the main exception is those with 10 years of work history in the U.S. That is rare.

Who is the sponsor?

1. Primary sponsor – the visa petitioner.
   - Spouse,
   - Fianc(é)e,
   - Parent,
   - Sibling, or
   - Child.
2. Joint sponsor – if visa petitioner has inadequate income.
   - Friend (?),
   - Employer (?),
   - Family member (?).

What are the sponsor's duties?

Repay "means-tested public benefits."

1. Food Stamps.
2. Medicaid.
3. Supplemental Security Income (SSI).
4. Not emergency disaster aid (for example).

What are the sponsor's duties?

Maintain immigrant's income at 125% of Federal Poverty Guidelines.

125 Federal Poverty Guidelines (2019)

Family Size	Annual	Monthly
1	$15,613	$1,301
2	$21,138	$1,761
3	$26,663	$2,222
4	$32,188	$2,682
5	$37,713	$3,143
6	$43,238	$3,603

$1,301/month Household of one

When does it end?

When the immigrant…

1. Becomes citizen.
2. Credited w/ 40-quarters of work.
3. Abandons residency and departs U.S.
4. Deported and gets new sponsor.
5. Dies.

When does it end?

Neither dissolution nor separation terminates the support duty.

(Or even remarriage for that matter).

The basics

1. Contract is between Sponsor and U.S. gov't
2. Beneficiary is a 3rd-party beneficiary w/ standing.
3. The I-864 is an enforceable contract. *Period*.

The basics.

What is the sponsor's consideration?

1. Used to be: overcoming inadmissibility.
2. Now: becoming a permanent resident.

Government: "You're not getting residency unless the sponsor signs this contract."

Enforcing the Form I-864.



Enforcing the Form I-864.

This is a “federal law issue” so go to federal court.



Enforcing the Form I-864.

“Presumption of concurrency.”

Federal court.

9th Circuit/Majority view: federal question jurisdiction.

Erler v. Erler
824 F.3d 1173
(9th Cir. 2016)

State courts.

It's just a contract, judge!

Personal jurisdiction.

Waived as to any “appropriate court.”

Dissolution case?

Washington → No
Matter of Khan

California → Yes

Matter of Kumar

Dissolution case?

Standard approach: bring a separate civil action.

What damages may be recovered?



Measure of damages.

125% FPG (household size) per month

(-) Actual income

= Recovery

Example.

6 months

x ($1,301) (household 1)

= $7,806

Plus *specific performance*.

“Income.”

May count as income	Probably does not count
Employment	Gifts from friends/family
Payments from sponsor	Grant-funded shelter, etc.
Arguably means-tested benefits	Assets
	Child support

Attorney fees.



What about affirmative defenses?

Two competing views.

Affirmative defenses almost always fail (if the court lets you raise them at all).

1. Illusory contract/lack of consideration.
2. Unconscionability.
3. Fraud in the inducement.
4. Statute of limitations.
5. Standing.



No duty to mitigate!

Don’t want to work? Don’t have to.

The *no affirmative* defenses view.

Dorsaneo v. Dorsaneo, 261 F.Supp.3d 1052 (N.D. Cal. 2017) (review pending).

"[E]ven if the sponsor presents legitimate evidence of fraudulent inducement, *he has borne the risk of being fraudulently induced into sponsoring someone*, and must satisfy his financial obligations regardless."

What about nuptial agreements?

Majority rule: enforcement rights cannot be waived.

How do cases resolve?

1. Lump sum or structured payment in exchange for full waiver.
2. Payment of arrears + monthly support payments until contract is terminated.

If this is a thing, why haven't I heard about it?

1. Immigration experts don't handle civil damages litigation.
2. Civil litigators and family lawyers rarely have immigration law expertise.

You need both to handle these cases.

Who is the most likely plaintiff?

1. Green card holder/“LPR.”
2. Unemployed/under-employed.
3. Challenges transitioning to employment.
4. Divorced or separating.
5. (Often) Short duration marriage.
6. (Often, sadly) Abuse in marriage.

So what should I do?

1. *Always* screen citizenship of *both* parties to a dissolution.
2. Opposing party is a green card holder – get advice of immigration counsel ASAP (but not us). See www.i-864.net/resources for articles.
3. Green card holder-client? Free case assessment & opinion at www.i-864.net. Figure out early if there is a possible claim.

Questions?

Contact us toll-free at 1-844-557-3646

www.i-864.net



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