



 **NIWAP** 


Affidavits of Support and Divorce Cases

Annual Multi-State Training
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Introductions

		
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Learning Objectives

By the end of this workshop you will be better able to:

- Learn the importance of the legally enforceable federal Affidavit of Support
- Learn how to use the Affidavit of Support and its supporting documentation to assess ability to pay
- Use the Affidavit of Support to order support for an immigrant victim

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Family Immigration

Immigration law permits U.S. citizens and lawful permanent residents to petition for family members meeting certain criteria to immigrate to the United States. The vast majority of immigrants who are lawfully admitted to the United States are admitted based on relationships with family members.

Family Petition

A citizen of the United States is able to petition for a spouse; married or unmarried children; parents; and brothers and sisters. A lawful permanent resident may petition for a spouse and unmarried children who are under or over age 21.

8 U.S.C. §1151(b)(2)(A)(i).

Admissibility – Public Charge

- Various factors are considered in determining admissibility. A critical factor includes the possibility that the intending immigrant may be “likely at any time to become a public charge.”

8 U.S.C. §1182 (establishing numerous grounds of inadmissibility based on issues ranging from criminal history to ideology to health).

Public Charge

- It is important to note that victims who file the following cases are exempt from public charge
 - VAWA self-petitioners
 - VAWA cancellation of removal
 - Battered spouse waivers
 - U visa cases
 - T visa cases
- An immigrant victim who files one of these cases could still have an enforceable affidavit of support

Affidavits of Support

Under provisions introduced in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, each person who petitions for family members to immigrate to the United States must execute a legally enforceable affidavit of support for each.
8 U.S.C. § 1182(a)(4)(C)(ii)

Affidavits of Support

In other words, the petitioner must sign an affidavit for the intending immigrant to ensure that the intending immigrant will not fall into poverty and rely on public assistance. Millions of these affidavits have been executed since 1996.

What facts in a case might alert a judge to the fact that a party before the court filed an affidavit of support?

- If as a judge you suspect an affidavit of support may have been filed by a litigant before you what would you do?
- How would you get a copy of the affidavit of support?

Sponsor's commitment


The sponsor demonstrates that he has "enough income and/or assets to maintain the intending immigrant(s) and the rest of [the] household at 125 percent of the Federal Poverty Guidelines."

8 U.S.C. §1183a(a)(1)(A).

2019 HHS Poverty Guidelines for Affidavit of Support

Sponsor's Household Size	100% of HHS Poverty Guidelines*	125% of HHS Poverty Guidelines*
	<i>For sponsors on active duty in the U.S. armed forces who are petitioning for their spouse or child</i>	<i>For all other sponsors</i>
2	\$16,910	\$21,137
3	\$21,330	\$26,662
4	\$25,750	\$32,187
5	\$30,170	\$37,712
6	\$34,590	\$43,237
7	\$39,010	\$48,762
8	\$43,430	\$54,287

Large Group Discussion



Erika and Tony have been married for 5 years they are now before your Court for a divorce, because Tony has been physically abusing Erica for years. They have 2 children. Erika's is foreign born, Tony her husband sponsored her to be a lawful permanent resident. His income on the Affidavit of Support is \$45,000 a year.

- What is the household size?
- Do we have sharing of quarters issue?
- How much would Erica get under the affidavit of support?

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Calculating the Amount Owed Under the Affidavit of Support Exercise

- For a spouse
- For a sponsored child

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Sponsor's Commitment

The sponsor must show his ability to comply with this obligation by submitting supporting documentation on assets, employment, and taxes for the past three years.

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What Types of Evidence Do You Think Would be Submitted With the Affidavit of Support?



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Proof of Sponsor's Current Income

- Pay stubs or other documentation of pay for the past six months.
- Evidence of other income such as Tax Exempt Interest, Qualified Dividends, IRA distributions, pension, annuities, Social Security Benefits (only SSA-1099 and/or SSDI-1099).



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Letter from current employer

- Dates of employment
- Nature of the job
- Yearly salary earned
- Number of hours per week worked
- Prospects for future employment and advancement



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Supporting Evidence

- Federal income tax return and all supporting tax documents (W-2s, 1099s, Form 2555, and tax schedules) for the most recent tax year.
- Bank statements covering the last 12 months or a statement from an officer of the bank or other financial institution in which the sponsor has deposits, the account balance averaged over a 12 month period, and current balance.

Supporting Evidence

- Evidence of ownership, value, and dates acquired of stocks, bonds, and certificates of deposit;
- Evidence of ownership, value/equity, and dates acquired of other personal property;
- Evidence of ownership, a recent licensed appraisal or county tax assessment, any mortgage/lien or lien release of any real estate, and dates acquired.

End of Obligation to Support

- The obligation to support continues until the sponsored immigrant becomes a U.S. citizen;
- can be credited with 40 qualifying quarters of work in the United States;
- no longer has lawful permanent resident status, and has departed the United States;
- becomes subject to removal, but applies for and obtains in removal proceedings a new grant of adjustment of status, based on a new affidavit of support, if one is required; or dies.

Divorce does not end the obligation

- it is possible that none of these happen until the death of the parties involved.
- The Affidavit of Support itself specifically warns “that divorce **does not** terminate your obligations under this Form I-864.”

Impact on Family Support

Of particular importance is the fact that enforcement of the affidavit could have a significant impact in obtaining financial relief for a client who may be living in a precarious situation due to lack of access to economic resources.

Enforcement Considerations

Affidavit of Support enforcement considerations must become a routine part of family practice, from initial information gathering steps to ultimate strategic decisions about where and how to file cases.

Preclusion Issues

Immigrant litigants should be aware that if an Affidavit of Support exists, they might need to seek enforcement during their divorce litigation to avoid claim preclusion issues.

Federal or State Courts?

Federal and state courts have both exercised jurisdiction over Affidavit of Support enforcement actions. State courts have found little difficulty in exercising such jurisdiction, though rationales have differed. In some places, federal courts have exercised jurisdiction over enforcement actions.

Affidavit of Support and Spousal Support

Issues arise where cases “concern[] the interplay of the Affidavit of Support and any award of spousal support.”

Greenleaf v. Greenleaf, Docket No. 299131, 2011 WL 4503303, at *2 (Mich. Ct App. Sept. 29, 2011).

Affidavit of Support and Spousal Support

A Michigan court found that the obligation under the Affidavit is “separate and distinct from any obligation to pay spousal support,” and that the trial court had erred in “conflating the two obligations and applying them in a manner it found equitable.”

Greenleaf v. Greenleaf, Docket No. 299131, 2011 WL 4503303, at 3 (Mich. Ct. App. Sept. 29, 2011)

Greenleaf v. Greenleaf

This court ordered that “the trial court shall first determine plaintiff’s obligation under the Affidavit of Support and enforce that obligation.” “After having determined plaintiff’s obligation under the Affidavit of Support, the trial court shall make a separate determination whether defendant is entitled to spousal support.”

Counting qualifying quarters

If the marriage is intact, even if not healthy, the sponsored immigrant shares the quarters earned by her spouse during the marriage, which may shorten the obligation period. Even if legally separated, the parties still share quarters.

Duty to Mitigate

Some courts have found that the immigrant is expected to engage in meaningful employment. But, in *Liu v. Mund*, the court found that the Affidavit of Support exceptions do not include “the alien’s failing to seek work or otherwise failing to mitigate his or her damages.”

Liu v. Mund, 2012 WL 2861886 (7th Cir. July 12, 2012).



When Divorce impacts Immigration Status?

Family-sponsored Immigration

- Divorce after the immigrant spouse receives conditional permanent residency
 - Conditional permanent residence - Hardship waiver
 - Lawful permanent residency – no effect
- Application denied if
 - Divorce before interview
 - Divorce after the interview and before lawful/conditional permanent residency granted

Divorce of Refugees

Refugees

- Spouses and children of a refugee apply for and receive derivative refugee status
- Individuals who obtain derivative refugee status have the same rights and entitlements as other refugees
- Refugee spouses and step-children retain their refugee status and their ability to apply for lawful permanent residence and citizenship despite divorce, death, or the fact that children reaches the age of majority.

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Divorce of Asylees

- Spouses and children of asylees can apply for and receive derivative asylee status
- Divorce does not revoke this asylee status for derivative spouses and step-children
- Once the derivative asylee spouse obtained lawful permanent residency, divorce has no effect
- Divorce cuts off the ability of the spouse and any step-child of an asylee to file for lawful permanent residency
 - The only path to lawful permanent residency would be to apply for *nunc pro tunc* asylum.

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Divorce from a Lawful Permanent Resident

- Marriage to a lawful permanent resident
 - Allows for a Visa for spouse (V-1) and step-child (V-2)
 - Need to maintain this visa until they can file for and be granted lawful permanent residency
 - Visas for a V-1 spouse and V-2 stepchild terminate 30 days after the divorce becomes final.
 - An appeal stops the clock

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Divorce from Immigrant Visa Holder

- Visa holders can receive visas for their dependent spouses, step-children and children
- When a divorce is final
 - Dependent spouses and step-children go “out of status”
 - When DHS is informed their visas are revoked
- Divorce, in most case, will not affect status of natural-born children.

Flash Drive Materials

- Family Law Cases Special Issues > Custody
 - Family & Intimate Partner Violence Quarterly
- Divorce and Affidavits of Support
 - Michigan Family Law Journal
 - Immigration Concerns for Family Law Practitioners
 - Information on affidavits of support
 - ‘Til Death Do Us Part: Affidavits of Support and Obligations to Immigrant Spouses



Technical Assistance and Materials

- Power Point presentations and materials for this conference at
 - <http://niwaplibrary.wcl.american.edu/jtn-nola-2019/>
- Judicial Training Manual at
 - <http://niwaplibrary.wcl.american.edu/sji-materials/>
 - **NIWAP Technical Assistance:**
 - Call (202) 274-4457
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