U.S. Department of Justice
Immigration and Naturalization Service

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MEMORANDUM FOR MICHAEL A. PEARSON
EXECUTIVE ASSOCIATE COMMISSIONER
OFFICE OF FIELD OPERATIONS

FROM: Michael D. Cronin /s/
Acting Executive Associate Commissioner
Programs

SUBJECT: Whether an affidavit of support is required if the alien already has, or can be credited with, 40 qualifying quarters of coverage

Under INA §212(a)(4)(C), an alien who seeks permanent residence as an immediate relative or as a family preference immigrant is inadmissible as an alien likely to become a public charge, unless the visa petitioner submits an affidavit of support (INS Form I-864) that meets the requirements of §213A. This requirement also applies to employment-based immigrants, if a relative either filed the Form I-140, or has a significant ownership interest in the firm that did file the Form I-140. Section 213A(a)(3)(A), however, provides that the obligations under a Form I-864 terminate once the sponsored alien has worked, or can be credited with, 40 qualifying quarters of coverage, as defined under title II of the Social Security Act. The affidavit of support regulation reflects this provision. 8 C.F.R. §213a.2(e)(1)(i)(B).

The question has recently arisen: Is an affidavit of support still required if, at the time the alien seeks permanent residence through admission or adjustment of status, the alien can show that he or she already has worked, or can be credited with, 40 qualifying quarters of coverage?

The policy of the Service is that an affidavit of support *is not* required if, at the time the alien seeks permanent residence through admission or adjustment of status, the alien can show that he or she already has worked, or can be credited with, 40 qualifying quarters of coverage.

The basis for this policy is that it represents the most reasonable interpretation of INA §213A(a)(3)(A) and 8 C.F.R. §213a.2(e)(1)(i)(B). The obligations under the Form I-864 come into force when the sponsored alien acquires permanent residence. But if, at that time, the sponsored alien already has worked, or can be credited with, 40 qualifying quarters of coverage, then the obligation will expire at the very moment that it begins. Requiring the affidavit of support in this situation, therefore, would serve no purpose.

INA §213A(a)(3)(B), specifies how an alien may be credited with qualifying quarters worked by someone else. If an alien claims qualifying quarters worked by a parent, the alien

may claim *all* the qualifying quarters worked by the parent before the alien's 18th birthday. INA §213A(a)(3)(B)(i). Note that the statute does not require the parent-child relationship to have existed when the parent works the qualifying quarters. So an alien can claim even those of the parent's qualifying quarters that the parent worked before the alien's birth or adoption. If an alien claims qualifying quarters worked by a spouse, however, the alien may only claim those quarters that the spouse worked during the marriage. INA §213A(a)(3)(B)(ii). It must also be the case either that the alien is still married to the person who worked the qualifying quarters, or that that person is dead. *Id.*

The alien may not claim any qualifying quarter of coverage worked after December 31, 1996, if the person who worked that qualifying quarter – whether it was the alien himself or herself or a spouse or parent – also received any Federal means-tested benefit during the same period. INA §213A(a)(3)(A) and (B) (last paragraph), 8 U.S.C. §1183a(a)(3)(A) and (B) (last paragraph).

The Office of Programs requests your assistance in disseminating this policy memorandum to your respective offices and ensuring its immediate implementation.