

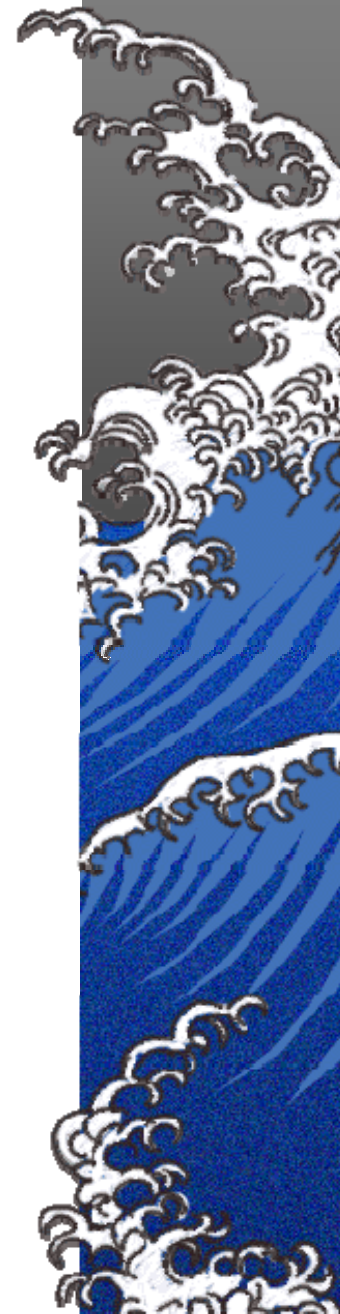
Public Charge and Affidavits of Support

**Stronger Bridges to Health Forum
Golden Gate to Health Insurance
Network**

San Francisco, CA

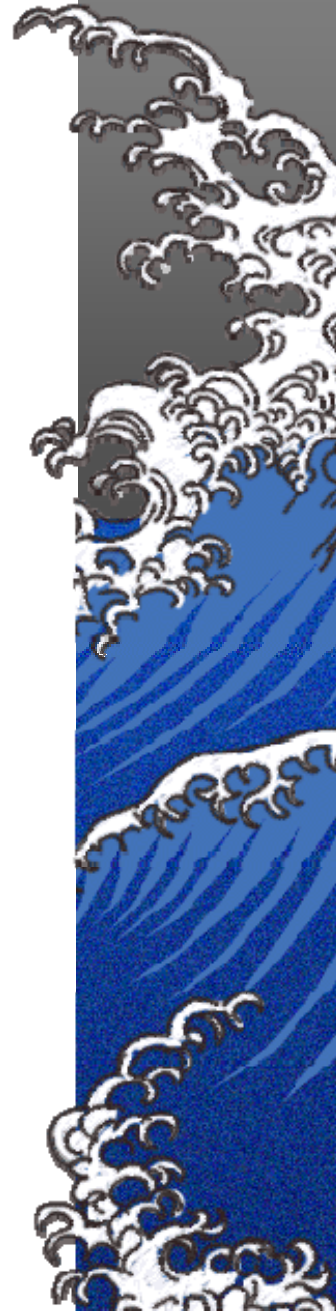
June 10, 2008

**Tanya Broder
National Immigration Law Center**



Public Charge

- ▶ A ground of inadmissibility
- ▶ Immigrant who has become or is likely to become “primarily dependent on the government for subsistence”



When Does Public Charge Apply?

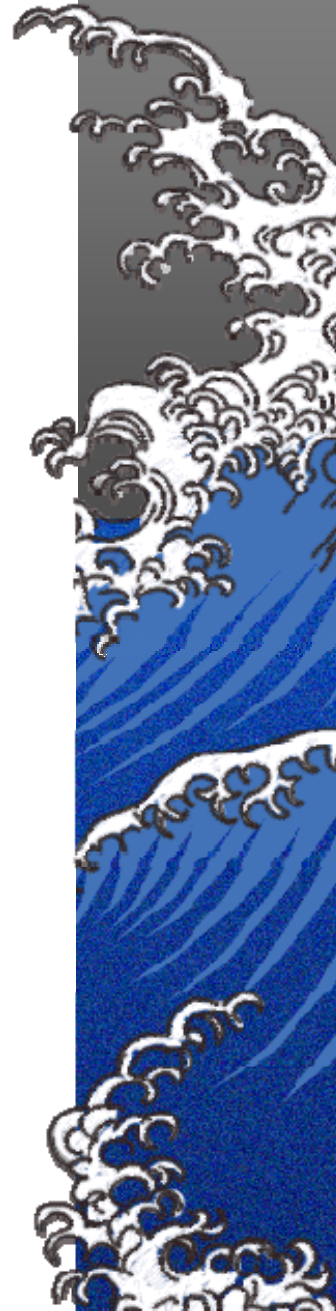
Public charge applies

- ▶ to persons applying for lawful permanent residence (LPR) in the U.S.
- ▶ to visa applications at U.S. consulates outside the U.S., and
- ▶ May apply to LPRs who return after more than 6 months outside the U.S.



“Forward Looking” Test Considers...

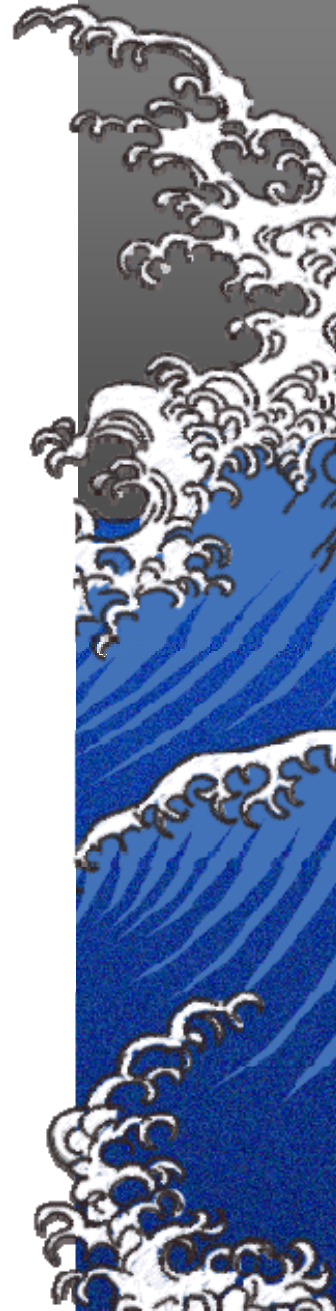
- ▲ Age
- ▲ Health
- ▲ Job, Education and Skills
- ▲ Income / assets
- ▲ Family to Support
- ▲ Affidavit of Support



Non-cash benefits and “special purpose” cash NOT considered

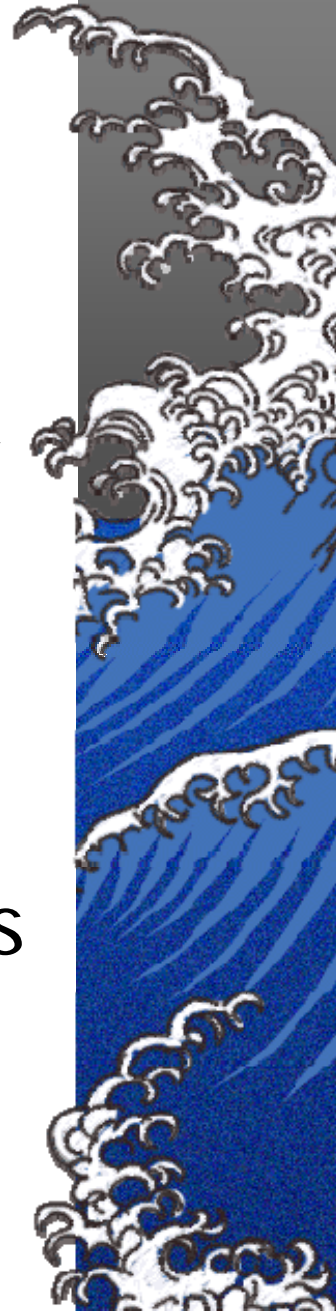
Examples of services that don't affect public charge decision:

- ▲ Medi-Cal, Healthy Families and other health insurance programs
- ▲ Nutrition programs (FS, WIC, school meals)
- ▲ Housing Assistance, LIHEAP
- ▲ Child Care, Job Training, short-term rehab
- ▲ Disaster assistance
- ▲ “Special purpose” cash



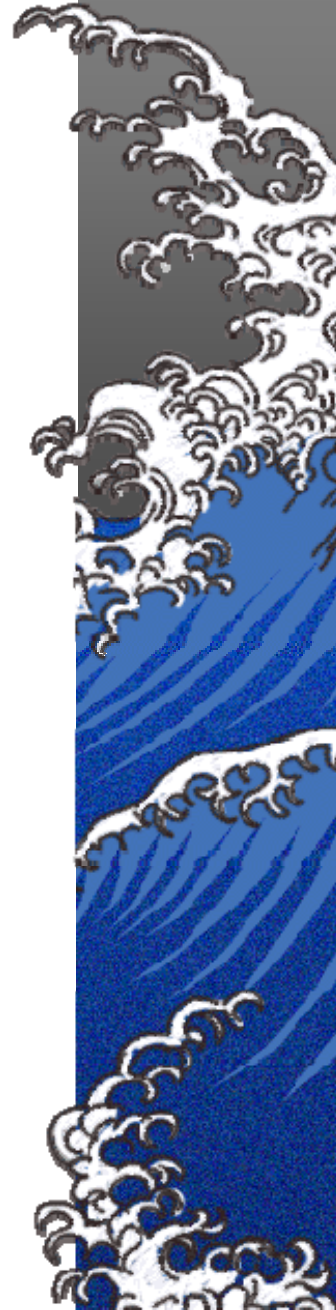
Use of Cash Welfare or Long-Term Care Can Raise Problems

- Past receipt of cash assistance – SSI, CAPI, CalWORKs, General Assistance or institutionalization for long term care at government expense can lead to public charge determination.
- But short term reliance on benefits does not automatically make someone a public charge.



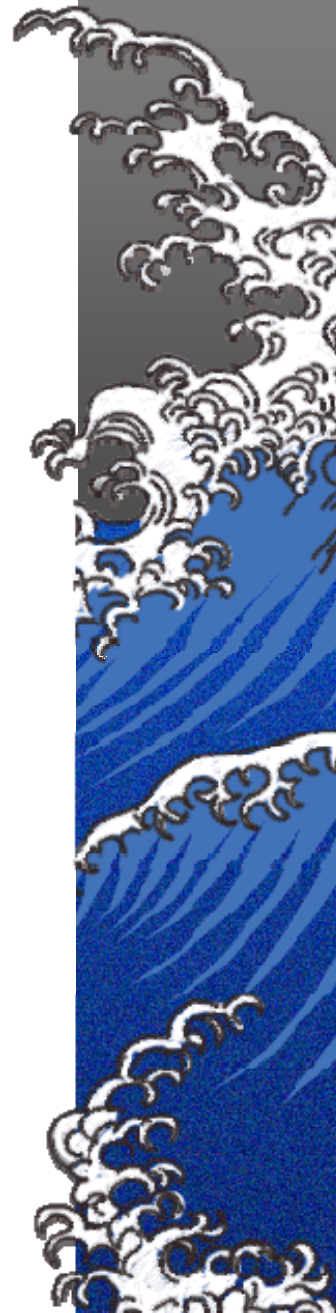
“Earned” Benefits Do Not Affect Public Charge

- ▲ Social Security
- ▲ Government Pensions
- ▲ Veteran’s Benefits



Use of Cash Benefits by Immigrant Domestic Violence Survivors

- ▶ VAWA self-petitioners may use any benefit, including cash, without affecting the public charge determination.
- ▶ They are, however, subject to public charge evaluations (re age, income, health, skills, etc).



No Public Charge Test for:

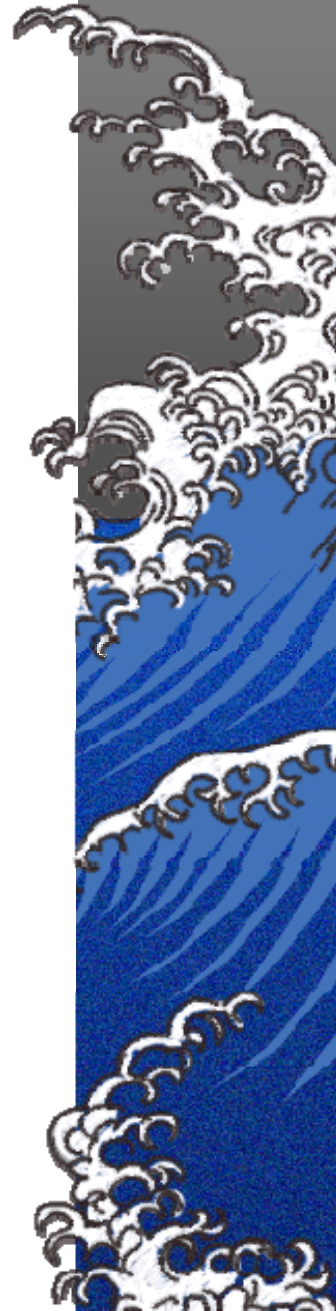
- ▶ Refugees, Asylees, Granted Withholding
- ▶ Trafficking Victims
- ▶ Cubans under Cuban Adjustment Act
- ▶ Haitians under Haitian Refugee Immigration Fairness Act
- ▶ NACARA Adjustment
- ▶ Registry applicants
- ▶ Special Immigrant Juveniles
- ▶ Certain Indo-Chinese, Eastern European parolees applying for Adjustment
- ▶ CITIZENSHIP applicants



Special Issues

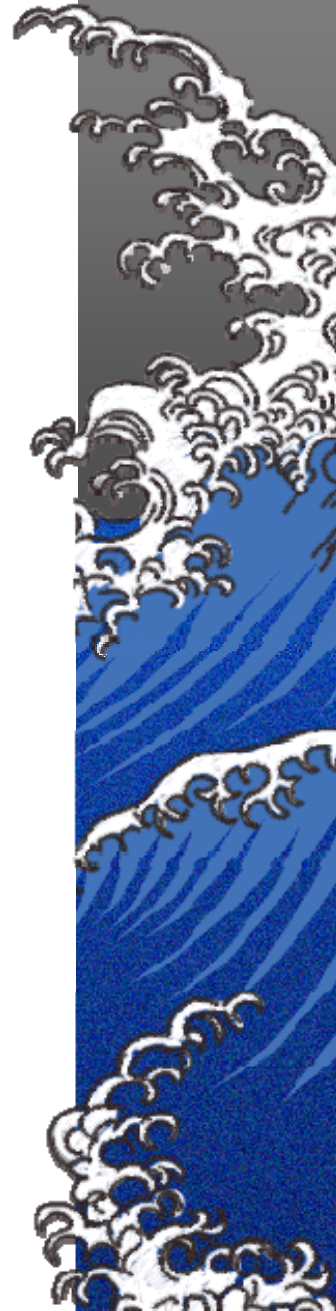
(Public Charge Guidance 64 Fed.Reg. 28693)

- ▲ Short term use of cash welfare
- ▲ Use of cash welfare by family members
- ▲ Past but not current use
- ▲ Effect on ability to sponsor relatives
- ▲ Requiring repayment



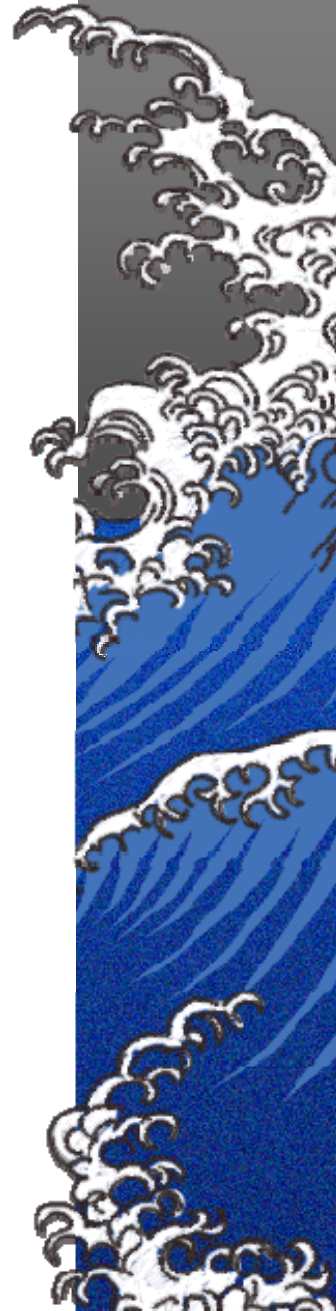
Some Caveats Concerning Past Use of Benefits

- ▶ Discretionary remedies (suspension of deportation/cancellation of removal)
- ▶ Immigrants with HIV
 - ▶ Communicable disease grounds
 - ▶ Waiver test may consider use of government-funded health care



Hypothetical 1

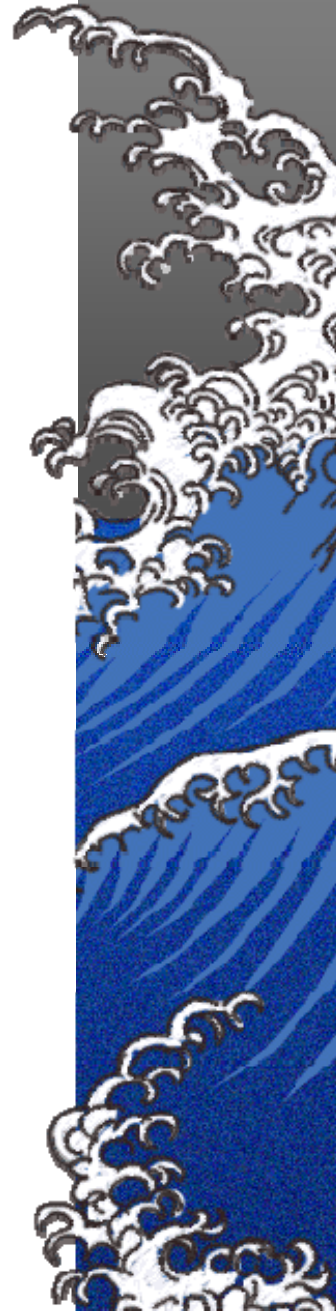
- ▶ Mark, who has HIV, has just won his asylum case. He hopes to apply for LPR status in the future but has a disability and can no longer work.
 - ▶ Which benefits can he receive?
 - ▶ Should he worry about public charge?
 - ▶ Does he face any other barriers to adjusting his status?



Hypothetical 2

Victor is an LPR receiving SSI. He is HIV Positive. Does Victor need to worry about his immigration status?

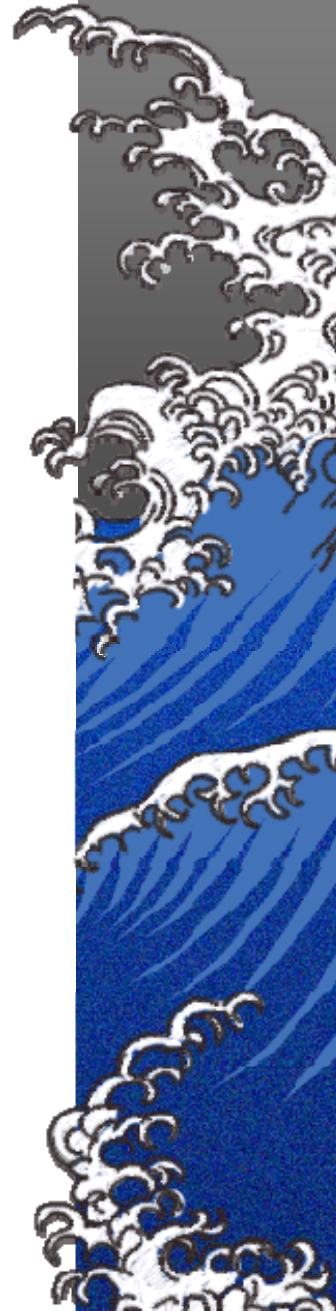
Do you have any advice for Victor?



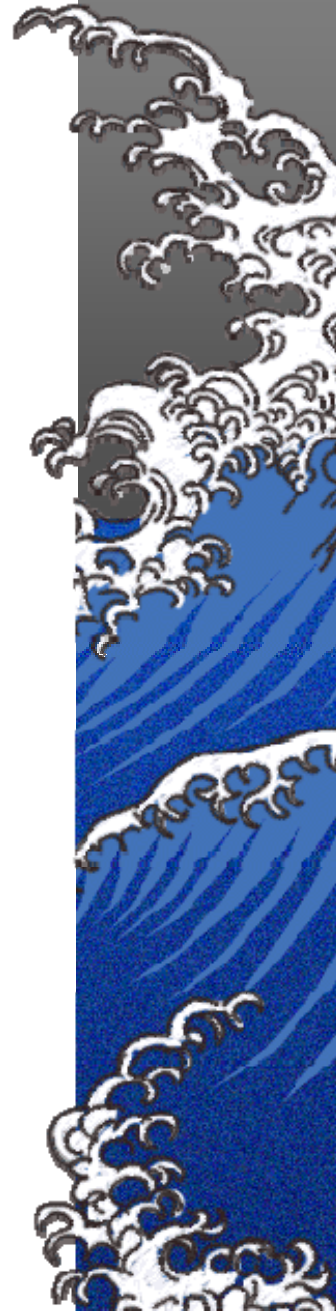
Hypothetical 3

Margie, who was undocumented, married Greg, an LPR. She left him after he became abusive. She then filed a self-petition under VAWA, but does not have her green card yet. Margie is living with her daughter, Irma, who was born in the U.S. She is currently unemployed.

- ▶ Which benefits can Margie and Irma receive?
- ▶ Does Margie need to worry about public charge? Does this depend on the types of benefits she receives?

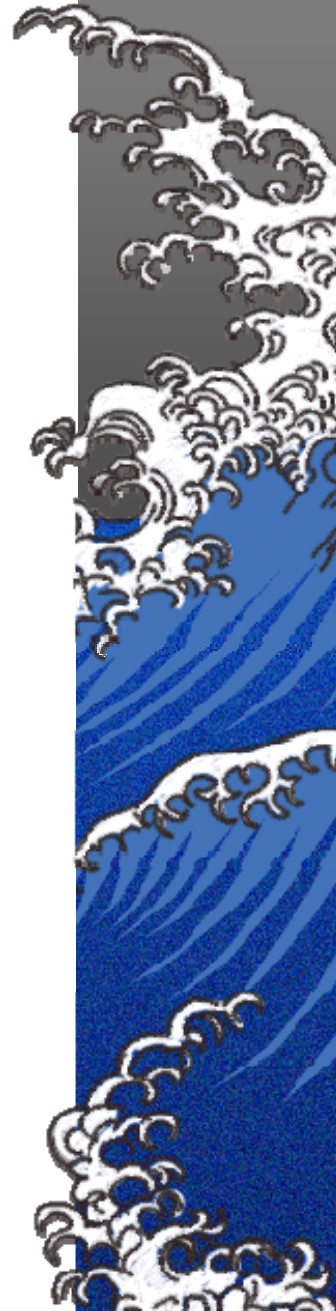


Affidavits of Support



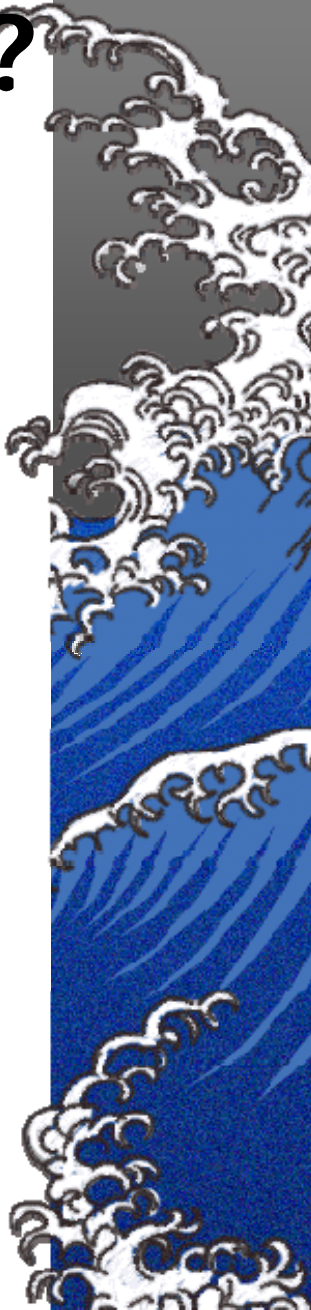
What is an Affidavit of Support?

- ▲ Agreement by sponsor to support the immigrant
- ▲ “non-enforceable” affidavit (US CIS form I-134) still used by some
- ▲ “Enforceable” affidavit (US CIS form I-864) required for certain immigrants, beginning on 12/19/97



Who doesn't need a Sponsor?

- ▶ Refugees/asylees, Victims of trafficking
- ▶ Applicants for cancellation of removal
- ▶ Applicants under Cuban Adjustment Act or HRIFA
- ▶ NACARA Applicants
- ▶ Special immigrant juveniles or religious workers
- ▶ Registry applicants
- ▶ Certain Indochinese/East European parolees

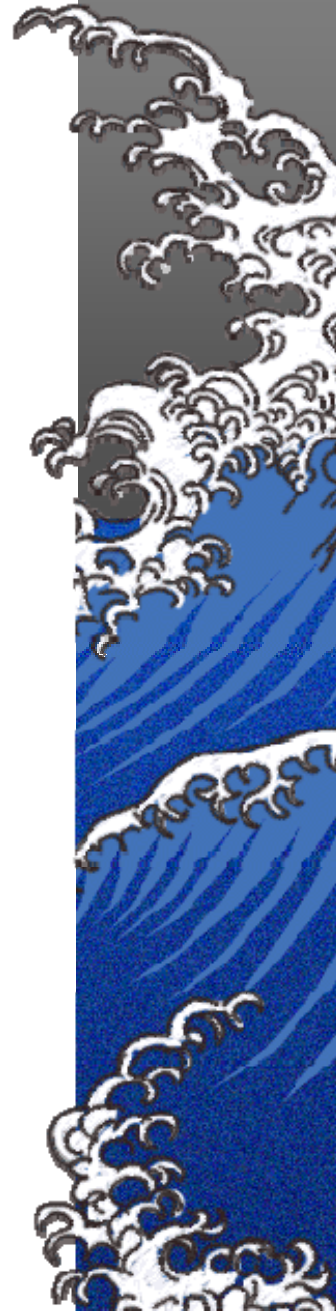


Non-enforceable Affidavit of Support (I-134)

- ▶ Not required
- ▶ Anyone can sign
- ▶ Not binding

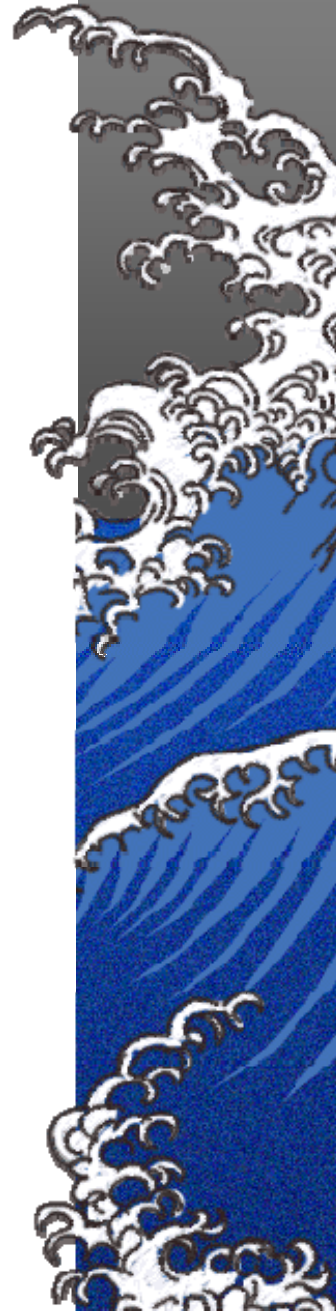
BUT

- ▶ Discretion by government whether to grant weight



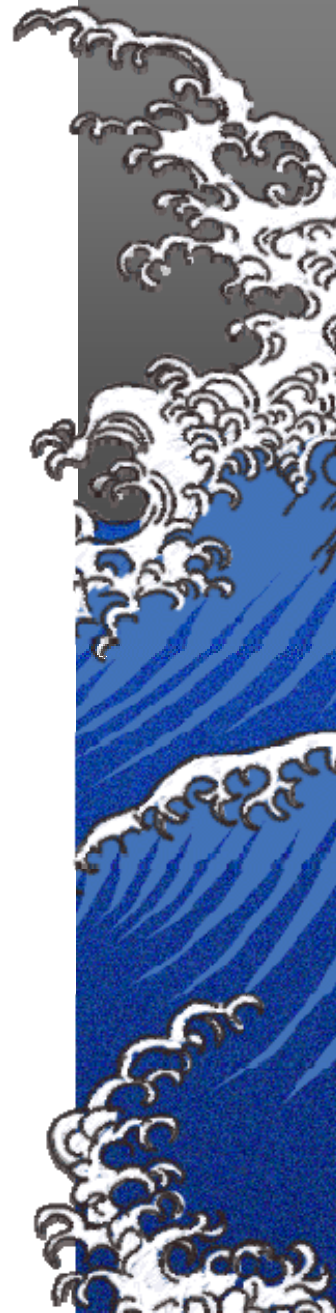
Enforceable Affidavit: I-864

- ▶ Promise of sponsor to support immigrant at 125% FPL and
- ▶ to reimburse government for “means-tested” benefits obtained by immigrant.
- ▶ Enforceable by sponsored immigrant and by federal/state benefit agencies
- ▶ Triggers extended “deeming” of sponsor’s income in some programs



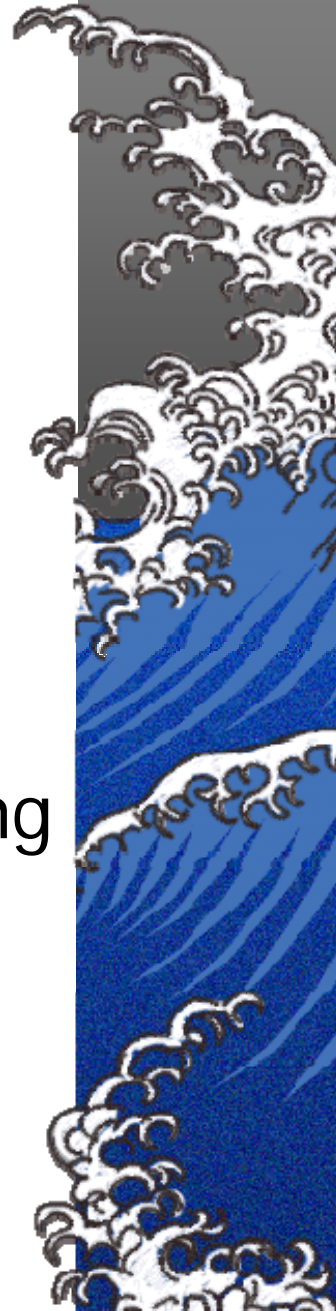
Who Must Submit Enforceable Affidavit (Form I-864)?

- ▶ Family-based immigrants
- ▶ Employment-based immigrants if relative is employer or owns > 5% of business
- ▶ Exceptions:
 - ▶ Battered spouses and children
 - ▶ Widows/widowers
 - ▶ Persons with credit for 40 quarters of work history
 - ▶ Eligible under Child Citizenship Act



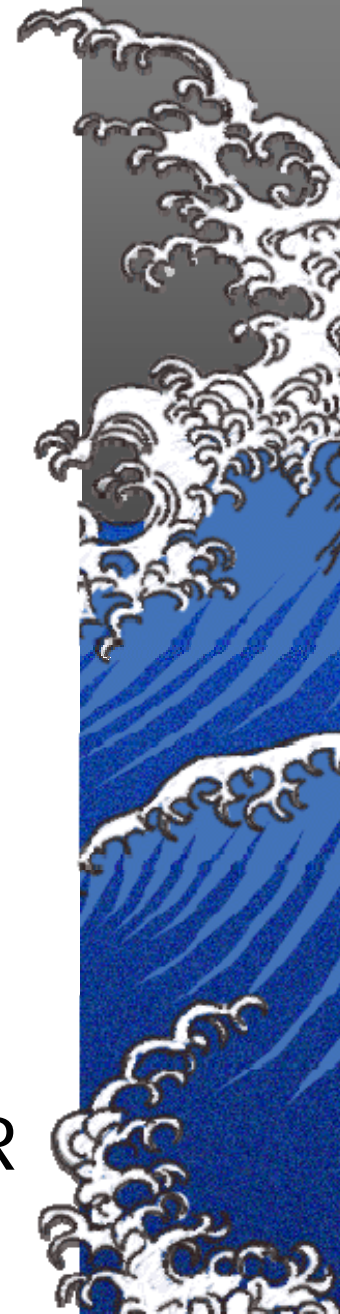
Sponsor Income Requirements (I-864)

- ▶ Household income of 125% of FPL (100% if active duty military)
- ▶ Household includes:
 - ▶ Sponsor
 - ▶ Intending Immigrant
 - ▶ Immigrant family members accompanying or following
 - ▶ Relatives residing with sponsor
 - ▶ Any others claimed as “dependents”
 - ▶ Any other immigrants sponsored



If Sponsor Cannot Meet Income Requirement

- ▲ Use income of other “household” members
 - ▲ Spouse, parent, adult son or daughter who reside with sponsor
 - ▲ Included as “dependents” on tax return
 - ▲ Contract with sponsor and agree to joint and separate support liability (I-864A)
- ▲ Recruit joint sponsor
- ▲ Add assets
- ▲ Can use immigrant’s income if spouse of sponsor or live w/sponsor and income will continue from same source after become LPR

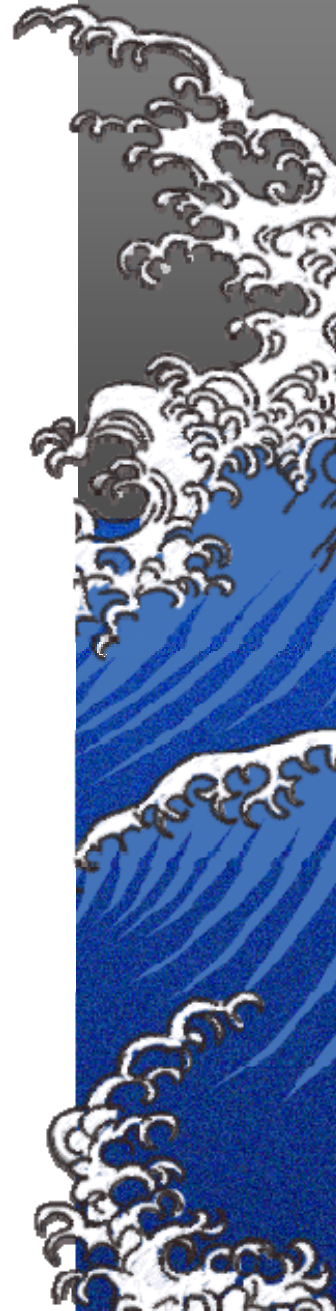


Sponsor's Liability

Maintain support until immigrant:

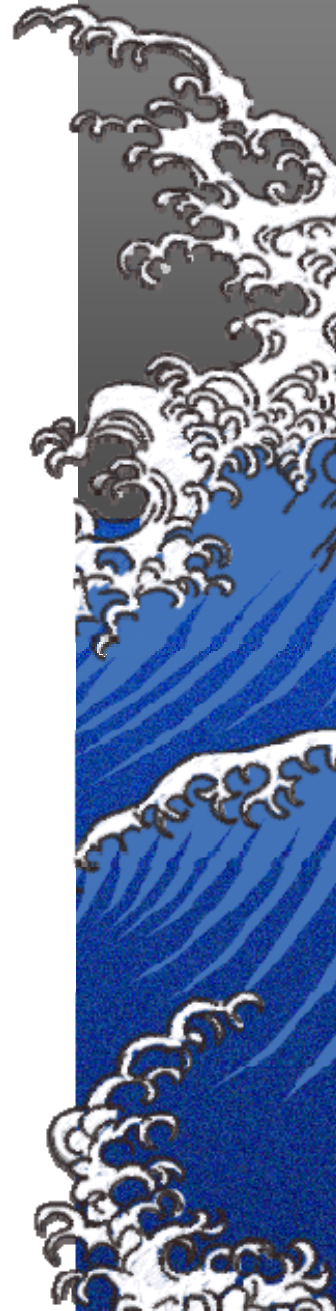
- ▲ Becomes a citizen
- ▲ Earns credit for 40 quarters of work
- ▲ Leaves U.S. permanently, or
- ▲ Dies (estate may be liable)
- ▲ Bankruptcy (?)

Reimburse Government if immigrant uses
"means-tested public benefit"



Means-tested Benefits

- ▲ SSI
- ▲ TANF
- ▲ Medicaid (non-emergency)
- ▲ Food Stamps
- ▲ SCHIP
- ▲ State Programs as Defined by State



Benefits Not Included as Means-Tested

- Emergency Medicaid, immunizations, treatment/testing of communicable diseases
- Short-term, non-cash disaster relief
- School meals, Student assistance
- Foster care and adoption assistance
- Head Start
- Job Training Partnership Act

*Sponsors receiving food stamps not liable for
FS used by sponsored immigrants*

