



# CATHOLIC LEGAL IMMIGRATION NETWORK, INC.

## **Frequently Asked Questions About Form I-134, Affidavit of Support March 3, 2023**

Beginning in the summer of 2021, thousands of humanitarian parole applications were submitted for Afghan nationals seeking to leave dangerous conditions in Afghanistan. The parole process typically involves a petitioner in the United States filing a humanitarian parole application on Form I-131, Application for Travel Document, on behalf of an individual overseas. An individual overseas can also file a self-petition on Form I-131. In either case, Form I-131 typically must be accompanied by Form I-134, Declaration of Financial Support, signed by the financial sponsor.

In April 2022, USCIS announced the creation of a new parole program, Uniting for Ukraine, which allows Ukrainians displaced by Russia's war to travel to the United States and be paroled in for a two-year period at a U.S. port of entry. While applicants for this program were initially required to include Form I-134, beginning on Jan. 6, 2023, the U.S. Citizenship and Immigration Services (USCIS) required the submission of Form I-134A, Online Request to be a Supporter and Declaration of Financial Support. Potential supporters should not file Form I-134 for an individual under Uniting for Ukraine or the processes for Cubans, Haitians, Nicaraguans and Venezuelans. They should file Form I-134A, which can only be accessed via a USCIS online account.

Please find answers below to some of the more frequently asked questions about Form I-134.

### **What is Form I-134 and when is it used?**

Form I-134 may be used in any case where a noncitizen is potentially inadmissible on public charge grounds but where there is no requirement for the submission of a Form I-864, Affidavit of Support, under Section 213A of the INA. The two most common applications where the I-134 is used are for humanitarian parole and for a fiancé(e) nonimmigrant visa. The purpose of Form I-134 is to document the personal finances of a person—called the sponsor—who resides in the United States.

### **What is the minimum income requirement for the I-134?**

USCIS will refer to the Federal Poverty Guidelines (FPG) to determine whether the sponsor has demonstrated adequate income for the household size. The current guidelines are available at <https://www.uscis.gov/i-864p>. A sponsor on an I-134 would need to show an income of 100 percent of the FPG, in contrast to a sponsor on an I-864 who would need to show an income of 125 percent. Sponsors on active duty in the U.S. Armed Forces who

are petitioning their spouse or child and submitting Form I-864 have to show only 100 percent of FPG. For a household of four, a sponsor on an I-134 residing in one of the lower 48 states would need to evidence income of \$30,000, while the equivalent sponsor on an I-864 would need to evidence \$37,500.

### **Does each parole applicant need a separate I-134?**

Yes. Each parole applicant must submit a separate I-134.

### **What type of support does the financial sponsor need to provide?**

Part 3 Question 21 of Form I-134 asks the sponsor whether he or she intends to make specific contributions, such as room and board or monetary support, to the beneficiary. Indicating an intent to provide specific contributions will likely strengthen the declaration. However, there is no specific monetary or other support that is *required* of the sponsor.

### **Where do I indicate the financial resources of the sponsor and the beneficiary?**

The I-134 is confusing and poorly worded with respect to reporting the income of the sponsor. Part 2 Question 13 asks for the beneficiary to enter financial information into a table. In the typical case where the beneficiary is using a separate person as sponsor, enter the word "self" under the column "Relationship to the Beneficiary." Under the column "Income contribution to the beneficiary annually," enter the income the beneficiary currently receives and estimates receiving for the next 12 months. If the beneficiary has a spouse, children, or other dependents, list them and provide their date of birth and relationship to the beneficiary. Calculate how much of the beneficiary's income will go toward maintaining these dependents; the rest of the income will be assigned to the beneficiary. Enter the number of dependents and the "total income" at the bottom. It is quite likely that the beneficiary will have no income available to him or her, in which case simply enter \$0.

The same analysis is used when reporting the sponsor's income in Part 3 Question 14. Enter the name of the sponsor, all dependents, their date of birth, and the dependents' relationship to the sponsor. Indicate the sponsor's income and apportion it among the dependents and the sponsor. Enter the number of dependents and the total income. It is important that the sponsor not include any income or financial support the sponsor intends to provide to the beneficiary. That information is entered in Part 3 Question 21.

The beneficiary's assets will be entered in a similar way in Part 2 Question 16. These are assets belonging to the beneficiary and not assets to be provided by the sponsor or someone else. Only include assets that can be converted to cash within 12 months and available to support the beneficiary while he or she is in the United States. The form asks for "evidence showing that the beneficiary has these assets." If listing a home, include evidence of ownership by the beneficiary, a recent appraisal by a licensed appraiser, and the equity value of the real estate. Do not list an automobile unless the beneficiary has more than one and at least one is not listed as an asset. When listing any asset, be sure to include a description of it, proof of ownership, the value, and the basis for the estimated net cash value.

The sponsor's assets will be listed in a similar way in response to Part 3 Question 17. Do not include any assets belonging to the beneficiary that were listed in Part 2 Question 16.

### **Does the I-134 sponsor need to be the I-131 applicant?**

No. The sponsor *can* be the applicant, but it is not a requirement. In the typical humanitarian parole process, there are two and possibly three parties: the parole applicant, the beneficiary who resides overseas, and the financial sponsor. In many cases, the parole applicant and financial sponsor will be the same, but that is not always the case. Take, for example, a U.S. citizen living in New York who wishes to file an I-131 application for humanitarian parole on behalf of his mother. The U.S. citizen is not working and cannot fulfill the income guidelines for the affidavit of support. The U.S. citizen remains the applicant on the I-131 but uses his cousin to be the financial sponsor on Form I-134.

### **Does the I-134 sponsor need to be related to the parole applicant or beneficiary?**

No. There is no requirement of a familial or other relationship between the sponsor, the parole applicant, or the beneficiary of the parole application. However, Department of State (DOS) guidance on the I-134 indicates that a family relationship or a close friendship between the financial sponsor and the beneficiary will strengthen the weight of the I-134. Therefore, an I-134 submitted by a financial sponsor who can document ties to the beneficiary will be given more weight.

### **Does the I-134 sponsor need to be a U.S. citizen or lawful permanent resident (LPR)?**

No. However, USCIS guidance indicates that an LPR or a U.S. citizen may more easily be able to show the ability to support the parolee in the United States. Therefore, identifying a U.S. citizen or LPR sponsor is advisable in most cases. Part 3 Question 10 asks for the sponsor's citizenship or immigration status. The Instructions also require the sponsor to provide evidence of his or her status. U.S. citizens or nationals can submit a copy of their birth certificate, certificate of naturalization or citizenship, or a passport. LPRs can submit Form I-551. Proof of lawful nonimmigrant status may include a copy of an unexpired visa in a passport.

### **Does a self-petitioner for parole need a separate financial sponsor?**

No. Self-petitioners for parole should typically identify a separate financial sponsor, but it is not required. In a typical humanitarian parole case, USCIS's guidance has been that it is possible for a self-petitioner to show that he or she is financially self-sufficient by submitting supporting documents, but a separate financial sponsor is advisable in most cases.

### **What financial documentation should the sponsor submit with the I-134?**

The sponsor should submit evidence of sufficient income and resources, which may include pay stubs, a copy of the most recent year of tax returns, bank statements, or a

letter from an employer. The Instructions to the I-134 specifically list the following documents:

- A signed statement from an officer of the bank or other financial institution that states when the account was opened, the total amount deposited for the past year, and the present balance of such account;
- A signed statement from an employer on business letterhead that states the date and nature of employment, salary paid, and whether the position is temporary or permanent;
- A copy of the last federal income tax return filed (tax transcript); and
- A list containing the serial numbers and denominations of bonds and names of the record owners (if applicable).

While the Instructions to the I-134 indicate that the above documents are required, we know of cases where the I-134 has been accepted without including all of them. The government has broad discretion in determining what documents to require. At a minimum, the sponsor should provide the most recent federal income tax return and proof of current employment.

### **Is it possible to have multiple sponsors for the I-134?**

Yes. The applicant can submit affidavits of support from two sponsors if, standing alone, each affidavit would be found insufficient.

### **Can a nonprofit organization submit Form I-134?**

Yes. USCIS may also accept proof that a nonprofit organization or medical institution is committed to providing financial support to the parolee for the duration of the person's stay in the United States. The organizational director may complete the I-134 on behalf of the organization or, instead of completing the I-134, provide a letter on behalf of the organization outlining the commitment to providing financial support to the parolee.

### **When does the I-134 become effective?**

The I-134 goes into effect after the parolee has arrived in the United States.

### **When does the I-134 terminate?**

There is no clear date as to when the I-134 obligation terminates. In contrast to the I-864, where the affidavit of support terminates upon a specific act—death, naturalization, removal from the United States, earning or being credited with 40 qualifying quarters—no fixed termination exists under the I-134.

### **Is the I-134 legally enforceable?**

Three separate courts held that an earlier version of Form I-134 was not enforceable against a sponsor by a state agency seeking to recover the medical costs incurred by

the sponsored immigrant.<sup>1</sup> The courts held that that the I-134 did not form a legal contract but represents only a moral obligation. They based this on the wording of the form, the lack of intention by the sponsor to be contractually bound, and the fact that the I-134 is only one form of evidence consular and USCIS agents consider in determining whether a non-citizen is likely to become a public charge.

These decisions were issued more than 50 years ago and involved an affidavit of support that is quite different than the current Form I-134. The decisions played an important role in Congress's mandating the use of a new affidavit of support, Form I-864, which includes specific contractual language and has been found by the courts to be legally enforceable. The government clarified at 8 CFR § 213a.5 that "the obligations of section 213A of the Act do not bind a person who executes such other USCIS affidavits of support." The obligations of sponsors executing an I-864 include maintaining the sponsored immigrant at an annual income that is at least 125 percent of FPG and reimbursing the state or federal agency that provides a means-tested public benefit to the sponsored immigrant.

That clarifying language does not mean that the current I-134 is unenforceable; it simply means that statutory requirements established for the I-864 do not cover the I-134. No recent court has addressed the enforceability of the I-134 by either the sponsored immigrant or by a federal or state agency against the sponsor. Some of the legal bases for the earlier court decisions are not applicable today, since at that time there was no statutory authority for the Department of State (DOS) to require an affidavit of support; no Department of Homeland Security that is now mandating the requirement of the Form I-134; no Systematic Alien Verification for Entitlements (SAVE) program that screens non-citizen applicants for their eligibility for means-tested programs; and no sponsor-to-immigrant deeming of income to determine the applicant's financial eligibility.

Another difference between the earlier versions of the I-134 and the current one is the language and terms to which the sponsor is agreeing. On the current I-134 the sponsor certifies under penalty of perjury:

That this declaration is made by me to assure the U.S. Government that the [beneficiary] will be financially supported while in the United States. That I am willing and able to receive, maintain, and support the [beneficiary] to better ensure that such persons will have sufficient financial resources or financial support to pay for necessary expenses for the period of his or her temporary stay in the United States.

The sponsor acknowledges having read the declaration, being aware of the responsibilities, and agreeing to financially support the beneficiary. But it is still not clear whether such language forms the basis of a legally enforceable contract between the sponsor and the U.S. government or between the sponsor and the beneficiary. It is quite likely that a court would find it to be unenforceable given that so many of the key

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<sup>1</sup> *San Diego County v. Vilorio*, 276 Cal. App. 2d 350, 80 Cal. Rptr. 869 (Cal. App. 1969); *Michigan ex rel. Attorney General v. Binder*, 356 Mich. 73, 96 N.W. 2d 140 (Mich. 1959); *California Dept. Mental Hygiene v. Renel*, 10 Misc.2d 402, 173 N.Y.S. 2d 231 (N.Y. App. Div. 1958).

contractual terms are undefined. These terms include the following: the duration of any agreement, which could extend indefinitely; the amount of any potential financial liability; and the factors that could cause liability, which will largely be determined by future events beyond the control of the sponsor.

The current version of the I-134 did not address these weaknesses and instead deletes language from an earlier version of the form that spelled out the sponsor's obligations more clearly: "that I may be sued if the [beneficiary] becomes a public charge;" that the I-134 may be considered by agencies providing means-tested benefit programs to these beneficiaries; and that the sponsor's income can be attributed to the beneficiary when applying for these programs. Such action would imply that the current I-134 is even less likely to be found legally enforceable. In addition, the DOS believes that the I-134 "is not legally binding on the sponsor and should not be accorded the same weight as Form I-864." 9 FAM 302.8-2(B)(3)(g)(3)(a).