



Model Memorandum of Points & Authorities in Support of a Request to Enforce the I-864 Immigration Form Instruction Sheet

About the I-864 Immigration Form

- An I-864 agreement is required for family-based immigration petitions. By signing the I-864 form, the sponsor agrees to financially support the sponsored immigrant at at least 125% of the federal poverty level until one of the “terminating conditions” is met. An example of a “terminating condition” is that the sponsored immigrant becomes a U.S. citizen.
- If the sponsor does not provide financial support at at least 125% of the federal poverty level, the sponsored immigrant may sue the sponsor to make them pay the support. The sponsored immigrant can also ask a family court to enforce this agreement.
- Unlike with a request for spousal support, a sponsored immigrant does not have a duty to seek full time work in order to get the support owed under the I-864 agreement.

This model Memorandum of Points & Authorities (MPA) can be used by an immigrant in a family law case to get the financial support owed under the I-864 immigration agreement.

To use this MPA, fill in the information highlighted in yellow. As explained in the model, a declaration must be filed with the MPA. Once the information on the MPA is filled in and a declaration is done, serve and file the MPA, the declaration, and all the exhibits attached to the declaration.

The person using the MPA should make sure the MPA fits their situation before it is filed. If the MPA does not fit their situation, it may need to be updated before it is filed.

For additional tips on enforcement of the I-864, please see FVAP’s case alert about *Kumar v. Kumar*, a California case about enforcing an I-864 in family court. You can find the case alert at <https://fvaplaw.org/wp-content/uploads/2019/03/Case-Alert-Kumar.pdf>.

How do I get more assistance? Contact FVAP at info@fvaplaw.org or (510) 858-7358 for questions.

This Instruction Sheet and MPA are not providing legal advice and should not replace the advice of an attorney. This resource uses California law only. Last updated on December 1, 2021. Copyright © Family Violence Appellate Project 2019.

1 [YOUR NAME]
[Street Address]
2 [City, State, Zip]
Phone Number (with area code): [XXX-XXX-XXXX]
3 Fax Number: [if available]
Email: [if available]
4
5
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF [NAME OF COUNTY]**

10
11 [NAME OF PETITIONER]) Case No.: [insert case number]
12)
Petitioner,)
13 v.) **MEMORANDUM OF POINTS AND**
[NAME OF RESPONDENT],) **AUTHORITIES IN SUPPORT OF**
14) **[PETITIONER/RESPONDENT'S]**
Respondent.) **REQUEST TO ENFORCE THE I-864 AS A**
15) **BREACH OF CONTRACT CLAIM**
16) **DATE: [date of hearing]**
17) **TIME: [time of hearing]**
18) **DEPT: [department number]**
19) **Judge: [name of hearing judge]**
20) **Dept.: [department number]**
21) **Action Filed: [date]**
22) **Trial Date: [date or unassigned]**

21 **I. Introduction**

22 [PETITIONER'S / RESPONDENT'S] request to enforce [PETITIONER'S /
23 RESPONDENT'S] financial support obligations as a breach of contract claim arises out of
24 [PETITIONER'S / RESPONDENT'S] promise to financially support the [PETITIONER /
25 RESPONDENT] as set forth in the Affidavit of Support ("I-864"). The I-864, which is required
26 under federal law for all family-based immigration petitions, is a contract between the sponsor and
27 the United States, wherein the sponsor agrees to financially support the sponsored immigrant until a
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1 terminating condition is met. (See 8 C.F.R. § 213a.2, subd. (d).) Given that none of the terminating
2 conditions under the Immigration and Nationality Act have been satisfied, [PETITIONER /
3 RESPONDENT] is in breach of their contractual obligations under the I-864. As the sponsored
4 immigrant, [PETITIONER / RESPONDENT] has standing to assert this claim and enforce
5 [PETITIONER'S / RESPONDENT'S] support obligations as a breach of contract claim in family
6 court. (See *In re Marriage of Kumar* (2017) 13 Cal.App.5th 1072, 1082-1084.) Furthermore,
7 [PETITIONER / RESPONDENT] has no duty to mitigate these damages. (*Id.* at pp. 1084-1085.)
8 Accordingly, [PETITIONER / RESPONDENT] respectfully requests that this Court enforce
9 [PETITIONER'S / RESPONDENT'S] support obligations set forth in the I-864.

10 II. Factual Background

11 **[A sworn declaration of relevant facts should be submitted along with the**
12 **memorandum. Other evidence (for example, a copy of the I-864 or the federal poverty**
13 **guidelines) should be attached to the declaration as exhibits. Each fact asserted in this**
14 **memorandum should have an accompanying citation to the declaration. The following is an**
15 **example of how facts in the declaration can be referenced:**

- 16 1. [PETITIONER / RESPONDENT] married on [DATE]. (See Decl. of [] paragraph (para.) [].)
- 17 2. [PETITIONER / RESPONDENT] submitted a family-based immigration petition to bring
18 [PETITIONER / RESPONDENT] to the United States on [DATE]. (See Decl. of [] para. [].)
- 19 3. As part of the immigration petition, [PETITIONER / RESPONDENT] executed a valid I-864,
20 agreeing that [she/he/they] can and will financially support [PETITIONER / RESPONDENT] at
21 an annual income no less than 125% of the federal poverty level until a terminating condition is
22 met. (See Decl. of [] para. [], Exh. [].)
- 23 4. On [DATE], [PETITIONER/RESPONDENT] filed for dissolution of marriage/requested a
24 restraining order. (See Decl. of [] para. [], Exh. [].)
- 25 5. Since [date that PETITIONER/RESPONDENT stopped paying support (*you must be filing this*
26 *sometime after the date Petitioner/Respondent stopped paying support*)],
27 [PETITIONER/RESPONDENT] has failed to financially support
28 []

1 [PETITIONER/RESPONDENT] at an annual income that is at least 125% of the federal poverty
2 level. (See Decl. of [redacted] para. [redacted], Exh. [redacted].)]

3 **III. Argument**

4 a. Sponsor's Support Obligations Under the I-864 Have Not Been Terminated

5 A United States citizen may petition to bring their non-citizen spouse to the United States
6 through family-based immigration. As part of the immigration petition, the petitioner/sponsor must
7 submit an I-864, promising that they can and will financially support their sponsored family
8 member. (See generally 8 U.S.C. § 1183a.) Specifically, “the sponsor agrees to provide support to
9 maintain the sponsored alien at an annual income that is not less than 125 percent of the Federal
10 poverty line during the period in which the affidavit is enforceable.” (See 8 U.S.C. § 1183a, subd.
11 (a)(1)(A).) The purpose of the I-864 is to ensure that the petitioned immigrant does not become a
12 public charge of the United States upon immigrating. (See 8. U.S.C. § 213a.2, subd. (a).)

13 A sponsor's support obligations under the I-864 do not terminate unless the sponsored
14 immigrant:

- 15 (a) becomes a United States citizen,
- 16 (b) has worked or can be credited with working 40 qualifying quarters (approximately 10
17 years) under social security laws,
- 18 (c) abandons their lawful status or permanent residency and departs the United States,
- 19 (d) obtains a new grant of adjustment of status in removal proceedings, or
- 20 (e) dies.

21 (See 8 C.F.R. § 213a.2, subds. (e)(2)(i)(A)-(E).)

22 As plainly set forth above, dissolution of marriage is not a condition that terminates a sponsor's
23 obligations under the I-864. (See also *In re Marriage of Kumar*, *supra*, 13 Cal.App.5th at p. 1079.)

24 **[Include relevant facts here from the sworn declaration about how the sponsor's**
25 **support obligation under the I-864 has not been terminated because none of the terminating**
26 **conditions has been met. Each fact asserted in this memorandum should have an**

1 accompanying citation to the declaration and exhibit, if any. The following is an example of
2 how facts in the declaration can be referenced:

3 1. Here, [PETITIONER / RESPONDENT] executed a valid I-864 in their immigration petition to
4 bring [PETITIONER / RESPONDENT] to the United States on [DATE]. (See Decl. of [REDACTED],
5 Exh. [REDACTED].) As such, [PETITIONER / RESPONDENT] has agreed to financially support
6 [PETITIONER / RESPONDENT] at an annual income that is at least 125% of the federal
7 poverty level for as long as the affidavit is enforceable. Because a dissolution of marriage does
8 not terminate a sponsor’s obligations under the I-864 and no terminating condition has been met
9 in this case, [PETITIONER / RESPONDENT] remains obligated to financially support the
10 [PETITIONER / RESPONDENT] under the I-864.]

11 b. The I-864 is a Contract that is Enforceable in Family Court

12 Under federal immigration law, an I-864 must be “legally enforceable against the sponsor by
13 the sponsored alien, the Federal Government, any State... or by any other entity that provides any
14 means-tested public benefit...” (8 U.S.C. § 1183a, subd. (a)(1)(B).) Furthermore, by executing the
15 I-864, “the sponsor agrees to submit to the jurisdiction of any Federal or State court...” (8 U.S.C. §
16 1183a, subd. (a)(1)(C).) As such, state courts have jurisdiction over breach of contract claims to
17 enforce the I-864. This includes family courts.

18 In *Kumar*, for example, a sponsored immigrant wife sought to enforce her sponsor-
19 husband’s obligations under the I-864 in family court. (See *In re Marriage of Kumar, supra*, 13
20 Cal.App.5th at pp. 1076-77.) Finding that the sponsored immigrant wife lacked standing to enforce
21 the contract in state court, the trial court declined to enforce the I-864. (*Id.* at p. 1078.) The appellate
22 court reversed, finding that a sponsored immigrant has standing to bring an action to enforce the
23 contract in state court. (*Id.* at p. 1083.) The appellate court also held that family courts have
24 jurisdiction to hear breach of contract claims to enforce support obligations under the I-864 because
25 family courts are not courts of special jurisdiction, but rather, courts of general jurisdiction. (*Id.* at
26 pp. 1082-1083.)

1 [Include facts here from the sworn declaration about how the sponsor has breached
2 their support obligations under the I-864. Each fact asserted in this memorandum should
3 have an accompanying citation to the declaration and exhibit, if any. The following is an
4 example of how facts in the declaration can be referenced. Please note the federal poverty
5 guideline may change. The current federal poverty guideline can be found on this [webpage](https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines):
6 <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>.:

- 7 1. Here, although [PETITIONER / RESPONDENT] executed a valid I-864 on [DATE] agreeing to
8 support [PETITIONER / RESPONDENT] at an annual income no less than 125% of the federal
9 poverty level, [PETITIONER / RESPONDENT] has not paid this amount to [PETITIONER/
10 RESPONDENT]. (See Decl. of _____, Exh. _____.)
- 11 2. The current federal poverty guideline for a one-person household is \$[Insert number from
12 <https://aspe.hhs.gov/poverty-guidelines>, for example, 2021, it was 12,880 per year]. (See Decl.
13 of _____, Exh. _____.)
- 14 3. 125% of this guideline is \$[Calculate the amount and then insert here, for example, in 2021 it
15 was \$16,610 per year]. Thus, at minimum, [PETITIONER / RESPONDENT] is obligated to
16 support [PETITIONER / RESPONDENT] with this amount per year until one of the terminating
17 conditions has been met. Furthermore, [PETITIONER'S / RESPONDENT'S] annual income is
18 [\$\$\$], which is below this guideline. (See Decl. of _____, Exh. _____.)
- 19 4. Therefore, [PETITIONER / RESPONDENT] is in breach of [his/her/their] obligations and
20 [PETITIONER / RESPONDENT] has standing to enforce this claim. Accordingly, this Court
21 should enforce [PETITIONER'S / RESPONDENT'S] support obligations under the I-864.]

22 c. Sponsored Immigrant Does Not Have a Duty to Mitigate

23 A sponsored immigrant seeking enforcement of the I-864 does not have a duty to mitigate
24 damages by seeking employment for three independent reasons. (See *In re Marriage of Kumar*,
25 *supra*, 13 Cal.App.5th at pp. 1084-1085.) First, the sponsored immigrant's failure to seek work or
26 otherwise mitigate their damages is not an enumerated condition that excuses a sponsor's obligation
27 under the I-864. (*Id.* at p. 1084.) Second, absence of a duty to mitigate supports the statutory
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1 purpose of the I-864 by encouraging sponsors to be more cautious about sponsoring an immigrant.
2 (*Ibid.*) Third, a sponsored immigrant already has a strong incentive to seek work even without the
3 duty to mitigate damages because financial support promised under the I-864 is insubstantial. (See
4 *Ibid.*) Accordingly, [PETITIONER / RESPONDENT] does not have a duty to mitigate damages by
5 seeking employment.

6 **IV. Conclusion**

7 For the reasons set forth above, [PETITIONER/RESPONDENT] respectfully requests that
8 this Court enforce the I-864.

9
10
11 DATED:

12 *[Your signature]*
13 [YOUR NAME]
14 In Pro Per
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