

## Form I-213 Standard Language

### A. Form I-213 Presumption of Reliability

A Form I-213 can be authenticated by any recognized procedure, such as certification by an INS district director. *See Iran v. INS*, 656 F.2d 469, 472 (9th Cir. 1981); *see also Espinoza v. INS*, 45 F.3d 308, 311 (9th Cir. 1995). Here, because the [OFFICIAL] certified the respondent's Form I-213, this Court finds that it has been properly authenticated. Absent any evidence that a Form I-213 contains information that is incorrect or was obtained by coercion or duress, it is inherently trustworthy and admissible as evidence to prove alienage or deportability. *Matter of Barcenas*, 19 I&N Dec. 609, 611 (BIA 1988); *see also Espinoza v. INS*, 45 F.3d 308, 311 (9th Cir. 1995).

NOTE: The same analysis applies to Form WR-424.\* *Lopez-Chavez v. INS.*, 259 F.3d 1176, 1178 (9th Cir. 2001) (a properly authenticated WR-424 is admissible in a deportation hearing to prove its contents because it contains the same information held to be critical in *Espinoza* and is prepared in essentially the same way).

[If the respondent does not appear or does not testify, insert the following conclusion. Otherwise, skip this paragraph and discuss any arguments raised by the respondent.]

A respondent who does not appear at his hearing or does not testify is considered to have waived his opportunity to claim that an I-213 offered against him contains information which is incorrect or was obtained by coercion or duress. *See Matter of Ponce-Hernandez*, 22 I&N Dec. 784, 785-86 (BIA 1999); *see also Matter of Barcenas*, 19 I&N Dec. 609 (BIA 1988). Because the respondent did not [testify/appear] and no suggestion was made by [his/her] attorney that the form was erroneous or the result of coercion or duress, the presumption of reliability in *Matter of Barcenas* has not been rebutted. The Court therefore affords the Form I-213 full evidentiary weight.

### B. Incorrect Information or Coercion/Duress

#### 1. Source Problems

If the source of the information on an I-213 is neither the government nor the subject of the report, it cannot be presumed true. *See Espinoza v. INS*, 45 F.3d 308, 310 (9th Cir. 1995). In *Murphy v. INS*, 54 F.3d 605, 610 (9th Cir. 1995), the Ninth Circuit assigned little, if any, weight, to an I-213, after finding that the source of information was a government informant with apparently ulterior motives to make statements against the respondent. With no testifying witness to verify the reliability of this source and other indicators of untrustworthiness, the Court found that the I-213 did not establish clear and convincing evidence of alienage. *Id.* at 612.

In *Hernandez-Guadarrama v. Ashcroft*, 394 F.3d 674, 680 (9th Cir. 2005), the Ninth Circuit found that it could give no evidentiary weight to an I-213 that referred to a statement made by the petitioner's wife, a statement that the Court had previously determined it could not consider. The I-213 provided no additional evidence and as such had no independent value. *Id.*

If the source has been placed in doubt, then discuss if the preparing officer was available to testify about why the information is nonetheless reliable (or submitted an affidavit or provided some other helpful information to the Court), *see* section 4 below.

#### 2. When the Respondent Is a Juvenile

As in this case, when the respondent is a minor, the Court will first attempt to identify the source of the information contained in the Form I-213; whether it is from the minor alien or from an accompanying adult.

[If the source is a child, or it is not clear if it is a child, use this section]

While the Court cannot accept admission of deportability from an unrepresented unaccompanied respondent who is under the age of sixteen, the regulations do not prohibit the acceptance of admission of factual allegations. See 8 C.F.R. § 1240.48(b); see also *Matter of Amaya-Castro*, 21 I&N Dec. 583, 586 (BIA 1996). In *Matter of Ponce-Hernandez*, 22 I&N Dec. 784 (BIA 1999), the fact that the fifteen-year old respondent was the source of information on his Form I-213 did not render it inadmissible. The Board noted that nothing on the form indicated that the information was provided by anyone but the respondent, the information was detailed, and there was nothing facially deficient about the form that would render it inadmissible. *Id.* at 785-86. The Board thus found no reason to conclude that his age impeded an accurate exchange of basic biographical information. *Id.* at 787. In contrast, if the source of the information is possibly a very young respondent, then special care should be taken to explain the source and reliability of information contained in an I-213. See *Matter of Rosa Mejia-Andino*, 23 I&N Dec. 533 (BIA 2002) (Espinoza, concurring) (where the respondent was seven-years old when apprehended and it was unclear who provided the information on the I-213, the I-213 alone would be insufficient to warrant a finding of removability).

In this case, the respondent was [#] years old when apprehended and, as indicated on the I-213, was the source of the information... [determine if there is any reason to conclude that the respondent's age impeded an accurate exchange of information]. The Court therefore affords the Form I-213 [full/limited/no] evidentiary weight.

[If the source is an accompanying adult, use this section]

When the source of the information on the I-213 is clearly an accompanying adult, the special concerns about the reliability of information obtained from a minor do not apply. *Matter of Gomez-Gomez*, 23 I&N Dec. 522, 524 (BIA 2002). In the absence of valid cause to discredit the information obtained from the adult, or indication that the information was obtained by coercion or duress, the I-213 should be admitted. See *id.* at 526. In *Matter of Gomez-Gomez*, there was "a clear and crucial absence of any factual basis for undermining the trustworthiness of the allegations contained in the Form I-213." *Id.* Moreover, the form contained indicia of trustworthiness because it noted the source of the information and the circumstances of the respondent's apprehension. *Id.*

In this case, the I-213 clearly indicates that the information was obtained from [NAME], the respondent's [parent/uncle/etc]. [Indicate if there is or is not any other reason to doubt the trustworthiness of the adult's information such as a reason to suspect the person may be lying about his or her relationship to the child.] The Court therefore affords the Form I-213 [full/limited/no] evidentiary weight.

### **3. Problems with the Form or Accusations by the Respondent of False Information**

In the absence of evidence that the form contains any material errors, minor problems will not suffice to render the form inadmissible. See *Espinoza v. INS*, 45 F.3d 308, 311 (9th Cir. 1995) (not considered material error when the form contained two types of handwriting and did not indicate who filled it out and when). However, if the alien produces "probative evidence that contradicts anything material on the I-213," then the "factfinder would be hard put to find the I-213 clear and convincing evidence of alien status without the government's producing evidence to show the reliability of the

information on the I-213." *Id.* The problems identified must relate to the form itself; the circumstances of respondent's arrest and detention are not relevant to Form I-213 admissibility. See *Matter of Mejia*, 16 I&N Dec. 6 (BIA 1976). The Ninth Circuit held in *Murphy v. INS*, 54 F.3d 605, 610-11 (9th Cir. 1995) that a Form I-213 merited little, if any, weight where the petitioner disputed the information on the form and the source of the information was in doubt. The Court also pointed to unexplained cross-outs and uninitialed handwritten additions to the form in arriving at its conclusion that it could not rely on the I-213. *Id.*

The respondent in this case has alleged that [his/her] I-213 should be given [limited/no] weight because [insert alleged problem; i.e., the form has weird markings, contains incorrect information, lacks detail, etc]. This allegation [is/is not material/probative] because... The Court therefore affords the Form I-213 [full/limited/no] evidentiary weight.

#### 4. Cross Examination Problems

There is no an automatic right to cross-examine the preparer of an I-213, as that would place an unwarranted burden on the DHS. *Espinoza v. INS*, 45 F.3d 308, 311 (9th Cir. 1995). However, if the alien produces "probative evidence that contradicts anything material on the I-213," then the "factfinder would be hard put to find the I-213 clear and convincing evidence of alien status without the government's producing evidence to show the reliability of the information on the I-213." *Id.* In *Murphy v. INS*, 54 F.3d 605, 610-11 (9th Cir. 1995), the Ninth Circuit accorded little if any weight to the I-213 where the petitioner provided information casting doubt on the source of the form, he disputed significant information contained on the form such as his place of birth and the names of his parents, and the form contained other indicia of untrustworthiness such as unexplained cross-outs and handwritten additions. The Court found that the most prejudicial factor was that there was no testifying witness subject to cross-examination to verify the source of the information and the other identified problems. *Id.* at 611.

Here, the respondent has produced the following evidence... [determine if this is enough to rebut the presumption of reliability and if cross-examination has become necessary]. The Court therefore affords the Form I-213 [full/limited/no] evidentiary weight.

\*Form WR-424 is a 3 by 5 form completed by agents when they interview aliens. *Lopez-Chavez v. INS*, 259 F.3d 1176, 1178 (9th Cir. 2001). The WR-424 contains blanks for the agents to fill in the following information: name of the alien questioned; place and date of birth; status at entry; place, date, and time of entry; place, date, and time questioned; and the officer's name. *Id.*