



Legal Corner

BRINGING YOUR BELOVED HOME, THE K-1 AND K-3 VISA

By: Neelofer Syed, Esq.

In this article we will deal with the topic of K-1 and K-3 visas commonly called fiancé(e) visa. The fiancé(e) visa is categorized as K-1 when filed for alien fiancé(e) and K-3 when filed for alien spouse of the U.S. citizen. The lawmakers in the U.S have actually tried to recognize the concerns of alien fiancé(e), spouses and children of U.S citizens and as a result created special provisions facilitating to unite the families of U.S citizens. Such recognition, however, is not extended to the fiancé(e), spouses and children of legal permanent residents.



The process for both K-1 and K-3 visas is similar in some respects and different in others. For example both the visas require filing of Form I-129F with the USCIS, however unlike K-1, the petitioner of K-3 (spouse) is required to file an immediate relative visa petition before filing the I-129F. In addition the type of supporting documents required to be filed with the fiancé(e) petition varies in both cases.

Touching upon the K-1, a fiancé(e) of a U.S citizen can obtain a K-1 visa to enter

U.S for the purpose of getting married to U.S citizen. Such marriage is required to take place within 90 days of his or her arrival in U.S. If the marriage does not take place within the 90 days window, the K-1 alien must depart the country. The child of a K-1 alien may also get a K-2 visa. Getting the actual visa at the U.S consulate is subject to the approval of the fiancé(e) petition filed with the Immigration and Citizenship Services in U.S. (USCIS).

In order to file the fiancé(e) petition for K-1 visa certain criteria needs to be met. One of the basic requirements (among others) is that the U.S citizen petitioner needs to establish that s/he and the alien fiancé(e) have been in physical presence of each other in the past two years immediately before filing of the petition. I particularly mention this because there are still some cultures where arranged marriages take place or where it is not approved of the couple to meet with each other prior to the marriage. In such cases, while a fiancé(e) (K-1) petition can still be filed and approved, it needs special handling. In such a case it is very important to consult with an immigration attorney who has the experience of handling such cases.

An alien who arrives in the U.S. will not be allowed to adjust his or her status if s/he marries any one else other than the K-1 petitioner. The K-1 visa holder will be in violation of his/her status if they choose to marry someone other than the petitioner.

In addition, it is also required to satisfy the USCIS as well as the U.S consulate in home country of the K-1 alien, that if issued the visa the K-1 alien will not be a burden on state. The same is also applicable to the K-3 visa processing.

Coming to the K-3 visa for alien spouse, it is important that before filing the fiancé(e) petition the U.S. citizen petitioner first files the immigrant petition for immediate relative. The petitioner, however, need not wait for the approval of the immediate relative petition in order to file the fiancé(e) petition. Just the evidence that an immediate relative petition has been filed is enough to file the fiancé(e) petition for K-3 spouse.

The children of K-3 spouse may also apply for the K-4 visa. Since the K-4 status depends on the filing for the parent, a separate immediate relative petition need not be filed for the K-4 children, it is sufficient

that the names of the children are included in the fiancé(e) petition filed for the K-3 parent. In order to qualify as K-4 child the child must be under 21 and unmarried.

The K-3/K-4 is initially granted for 2 years. It is recommended that once the K-3 alien spouse and K-4 children arrive in U.S, they immediately proceed to file for their adjustment of status. Once admitted, aliens with K-3 and K-4 visas may travel outside the U.S. as long as they continue to maintain their status in the U.S. This privilege is not available to K-1 and K-2 visa holders. However, if the K-1 alien gets married to the petitioner within 90 days and files for their adjustment of status, they are allowed to travel on an advance parole while their adjustment of status applications is pending adjudication. Both the K-1 and K-3 visa holders are eligible to get work authorization upon arrival in the U.S. The work authorization application may be filed as a stand alone application, however if the K-1 or K-3 visa holder is filing for adjustment of status then the work authorization application may be filed as a part of the adjustment package.

The U.S citizen filing a K-1 or K-3 petition will hit a snag if s/he has been convicted of any offense against a minor as specified in the Adam Walsh Act. If the petitioner has previously been charged/convicted of any such offense or any other crime involving domestic violence or sexual abuse, s/he will need evidence of rehabilitation and need to file a waiver along with the fiancé(e) petition. For any petitioner charged with any such offense, it is extremely important to consult with an immigration attorney.

Whether it is K-1 or K-3, the process does not end at the approval of the fiancé(e) petition filed with USCIS. The next major step is to apply for the visa at the U.S consulate in the home country where the alien fiancé(e) or spouse resides.

Like most marriages and engagements, processing K-1 and K-3 can sometimes result in good and sometimes in bad situations. Often, unexpected situations may occur when the applicant reaches the consulate. The applicant of the K-1 or K-3 must be able to demonstrate that s/he will be otherwise eligible for the immigrant visa. The applicant must also be able to show that s/he will not become a burden on the state and last but not least, the applicant must be able to satisfy the visa officer regarding the genuineness of his/her relationship with the petitioner.

A few issues that may actually red flag the process are the discrepancies in the fiancé(e) petition and the visa application filed at the consulate by the alien fiancé(e)/spouse; omitting the names of the K-4/K-2 children in the fiancé(e) petition; undisclosed previous marriages etc. As such it is extremely important that an accurate and similar record of things and background information is provided to USCIS as well as to the U.S consulate.

Another potential issue that may come up in K-1 process is multiple filings by different petitioners for the same K-1 applicant. In such cases sometimes a petitioner is unaware of other filings, or the peti-

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