

Immigration and Nationality Act (INA)

INA Section 214(d)(1) 1bc/ A visa shall not be issued under the provisions of section 101(a)(15)(K)(i) 1bbb/ until the consular officer has received a petition filed in the United States by the fiancée or fiancé of the applying alien and approved by the 1bc/ Secretary of Homeland Security. The petition shall be in such form and contain such information as the 1bc/ Secretary of Homeland Security shall, by regulation, prescribe. 1bc/ Such information shall include information on any criminal convictions of the petitioner for any specified crime. It shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within 2 years before the date of filing the petition, have a bona fide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival, except that the 1bc/ Secretary of Homeland Security in his discretion may waive the requirement that the parties have previously met in person. In the event the marriage with the petitioner does not occur within three months after the admission of the said alien and minor children, they shall be required to depart from the United States and upon failure to do so shall be removed in accordance with sections 240 and 241.

(2) 1bc/ (A) Subject to subparagraphs (B) and (C), a consular officer may not approve a petition under paragraph (1) unless the officer has verified that--

(i) the petitioner has not, previous to the pending petition, petitioned under paragraph (1) with respect to two or more applying aliens; and

(ii) if the petitioner has had such a petition previously approved, 2 years have elapsed since the filing of such previously approved petition.

(B) The Secretary of Homeland Security may, in the Secretary's discretion, waive the limitations in subparagraph (A) if justification exists for such a waiver. Except in extraordinary circumstances and subject to subparagraph (C), such a waiver shall not be granted if the petitioner has a record of violent criminal offenses against a person or persons.

(C)(i) The Secretary of Homeland Security is not limited by the criminal court record and shall grant a waiver of the condition described in the second sentence of subparagraph (B) in the case of a petitioner described in clause (ii).

(ii) A petitioner described in this clause is a petitioner who has been battered or subjected to extreme cruelty and who is or was not the primary perpetrator of violence in the relationship upon a determination that--

(I) the petitioner was acting in self-defense;

(II) the petitioner was found to have violated a protection order intended to protect the petitioner; or

(III) the petitioner committed, was arrested for, was convicted of, or pled guilty to committing a crime that did not result in serious bodily injury and where there was a connection between the crime and the petitioner's having been battered or subjected to extreme cruelty.

(iii) In acting on applications under this subparagraph, the Secretary of Homeland Security shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Secretary.

(3) In this subsection:

(A) The terms 'domestic violence', 'sexual assault', 'child abuse and neglect', 'dating violence', 'elder abuse', and 'stalking' have the meaning given such terms in section 3 of the Violence Against Women and Department of Justice Reauthorization Act of 2005.

(B) The term 'specified crime' means the following:

(i) Domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse, and stalking.

(ii) Homicide, murder, manslaughter, rape, abusive sexual contact, sexual exploitation, incest, torture, trafficking, peonage, holding hostage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, or an attempt to commit any of the crimes described in this clause.

(iii) At least three convictions for crimes relating to a controlled substance or alcohol not arising from a single act.

INA Section 101(a)(15)(K) 3bb/ subject to subsections (d) and (p) of section 214, an alien who--

(i) is the fiancée or fiancé of a citizen of the United States and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after admission;

(ii) has concluded a valid marriage with a citizen of the United States who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or

(iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien;

8 CFR

8 CFR Section 214.2(k) Spouses, Fiancees, and Fiances of United States Citizens. (Heading amended 8/14/01; 66 FR 42587)

(1) Petition and supporting documents. To be classified as a fiance or fiancee as defined in section 101(a)(15)(K)(i) of the Act, an alien must be the beneficiary of an approved visa petition filed on Form I - 129F. The petition with supporting documents shall be filed by the petitioner with the director having administrative jurisdiction over the place where the petitioner is residing in the United States. A copy of a document submitted in support of a visa petition filed pursuant to section 214(d) of the Act and this paragraph may be accepted, though unaccompanied by the original, if the copy bears a certification by an attorney, typed or rubber-stamped, in the language set forth in § 204.2(j) of this chapter. However, the original document shall be submitted if requested by the Service. (Amended 8/14/01; 66 FR 42587)

(2) Requirement that petitioner and K-1 beneficiary have met. The petitioner shall establish to the satisfaction of the director that the petitioner and K-1 beneficiary have met in person within the two years immediately preceding the filing of the petition. As a matter of discretion, the director may exempt the petitioner from this requirement only if it is established that compliance would result in extreme hardship to the petitioner or that compliance would violate strict and long-established customs of the K-1 beneficiary's foreign culture or social practice, as where marriages are traditionally arranged by the parents of the contracting parties and the prospective bride and groom are prohibited from meeting subsequent to the arrangement and prior to the wedding day. In addition to establishing that the required meeting would be a violation of custom or practice, the petitioner must also establish that any and all other aspects of the traditional arrangements have been or will be met in accordance with the custom or practice. Failure to establish that the petitioner and K-1 beneficiary have met within the required period or that compliance with the requirement should be waived shall result in the denial of the petition. Such denial shall be without prejudice to the filing of a new petition once the petitioner and K-1 beneficiary have met in person. (Amended 8/14/01; 66 FR 42587)

(3) Children of beneficiary. Without the approval of a separate petition on his or her behalf, a child of the beneficiary (as defined in section 101(b)(1) (A), (B), (C), (D), or (E) of the Act) may be accorded the same nonimmigrant classification as the beneficiary if accompanying or following to join him or her.

(4) Notification. The petitioner shall be notified of the decision and, if the petition is denied, of the reasons therefor and of the right to appeal in accordance with the provisions of Part 103 of this chapter.

(5) Validity. The approval of a petition under this paragraph shall be valid for a period of four months. A petition which has expired due to the passage of time may be revalidated by a director or a consular officer for a period of four months from the date of revalidation upon a finding that the petitioner and K-1 beneficiary are free to marry and

intend to marry each other within 90 days of the beneficiary's entry into the United States. The approval of any petition is automatically terminated when the petitioner dies or files a written withdrawal of the petition before the beneficiary arrives in the United States. (Amended 8/14/01; 66 FR 42587)

(6) Adjustment of status from nonimmigrant to immigrant --

(i) [Reserved] (Removed and reserved 8/14/01; 66 FR 42587)

(ii) Nonimmigrant visa issued on or after November 10, 1986. Upon contracting a valid marriage to the petitioner within 90 days of his or her admission as a nonimmigrant pursuant to a valid K-1 visa issued on or after November 10, 1986, the K-1 beneficiary and his or her minor children may apply for adjustment of status to lawful permanent resident under section 245 of the Act. Upon approval of the application the director shall record their lawful admission for permanent residence in accordance with that section and subject to the conditions prescribed in section 216 of the Act. (Amended 8/14/01; 66 FR 42587)

(7) Eligibility, petition and supporting documents for K-3/K-4 classification. To be classified as a K-3 spouse as defined in section 101(a)(15)(k)(ii) of the Act, or the K-4 child of such alien defined in section 101(a)(15)(K)(iii) of the Act, the alien spouse must be the beneficiary of an immigrant visa petition filed by a U.S. citizen on Form I-130, Petition for Alien Relative, and the beneficiary of an approved petition for a K-3 nonimmigrant visa filed on Form I-129F. The petitions with supporting documents shall be filed by the petitioner with the director having administrative jurisdiction over the place where the petitioner is residing in the United States, or such other place as the Commissioner may designate. (Paragraph (k)(7) added 8/14/01; 66 FR 42587)

(8) Period of admission for K3/K-4 status. Aliens entering the United States as a K-3 shall be admitted for a period of 2 years. Aliens entering the United States as a K-4 shall be admitted for a period of 2 years or until that alien's 21st birthday, whichever is shorter. (Paragraph (k)(8) added 8/14/01; 66 FR 42587)

(9) Employment authorization. An alien admitted to the United States as a nonimmigrant under section 101(a)(15)(K) of the Act shall be authorized to work incident to status for the period of authorized stay. K-1/K-2 aliens seeking work authorization must apply, with fee, to the Service for work authorization pursuant to § 274a.12(a)(6) of this chapter. K-3/K-4 aliens must apply to the Service for a document evidencing employment authorization pursuant to § 274a.12(a)(9) of this chapter. Employment authorization documents issued to K-3/K-4 aliens may be renewed only upon a showing that the applicant has an application or petition awaiting approval, equivalent to the showing required for an extension of stay pursuant to § 214.2(k)(10). (Paragraph (k)(9) added 8/14/01; 66 FR 42587)

(10) Extension of stay for K-3/K-4 status. (i) General. A K-3/K-4 alien may apply for extension of stay, on Form I-539, Application to Extend/Change Nonimmigrant Status,

120 days prior to the expiration of his or her authorized stay. Extensions for K-4 status must be filed concurrently with the alien's parent's K-3 status extension application. In addition, the citizen parent of a K-4 alien filing for extension of K status should file Form I-130 on their behalf. Extension will be granted in 2-year intervals upon a showing of eligibility pursuant to section 101(a)(15)(K)(ii) or (iii) of the Act. Aliens wishing to extend their period of stay as a K-3 or K-4 alien pursuant to § 214.1(c)(2) must show that one of the following has been filed with the Service or the Department of State, as applicable, and is awaiting approval: (Paragraph (k)(10) added 8/14/01; 66 FR 42587)

(A) The Form I-130, Petition for Alien Relative, filed by the K-3's U.S. citizen spouse who filed the Form I-129F;

(B) An application for an immigrant visa based on a Form I-130 described in § 214.2(K)(10)(i);

(C) A Form I-485, Application for Adjustment to that of Permanent Residence, based on a Form I-130 described in § 214.2(K)(10)(i);

(ii) "Good Cause" showing. Aliens may file for an extension of stay as a K-3/K-4 nonimmigrant after a Form I-130 filed on their behalf has been approved, without filing either an application for adjustment of status or an immigrant visa upon a showing of "good cause." A showing of "good cause" may include an illness, a job loss, or some other catastrophic event that has prevented the filing of an adjustment of status application by the K-3/K-4 alien. The event or events must have taken place since the alien entered the United States as a K-3/K-4 nonimmigrant. The burden of establishing "good cause" rests solely with the applicant. Whether the applicant has shown "good cause" is a purely discretionary decision by the Service from which there is no appeal.

(iii) Notice of intent to deny. When an adverse decision is proposed on the basis of evidence not submitted by the applicant, the Service shall notify the applicant of its intent to deny the application for extension of stay and the basis for the proposed denial. The applicant may inspect and rebut the evidence and will be granted a period of 30 days from the date of the notice in which to do so. All relevant material will be considered in making a final decision.

(11) Termination of K-3/K-4 status. The status of an alien admitted to the United States as a K-3/K-4 under section 101(a)(15)(K)(ii) or (iii) of the Act, shall be automatically terminated 30 days following the occurrence of any of the following: (Paragraph (k)(11) added 8/14/01; 66 FR 42587)

(i) The denial or revocation of the Form I-130 filed on behalf of that alien;

(ii) The denial or revocation of the immigrant visa application filed by that alien;

(iii) The denial or revocation of the alien's application for adjustment of status to that of lawful permanent residence;

(iv) The K-3 spouse's divorce from the U.S. citizen becomes final;

(v) The marriage of an alien in K-4 status.

(vi) The denial of any of these petitions or applications to a K-3 also results in termination of a dependent K-4's status. For purposes of this section, there is no denial or revocation of a petition or application until the administrative appeal applicable to that application or petition has been exhausted.

Public Law 109-162

SEC. 832. ACCESS TO VAWA PROTECTION REGARDLESS OF MANNER OF ENTRY.

(a) Information on Certain Convictions and Limitation on Petitions for K Nonimmigrant Petitioners-

(1) 214(d) AMENDMENT- Section 214(d) of the Immigration and Nationality Act (8 U.S.C. 1184(d)) is amended--

(A) by striking `(d)' and inserting `(d)(1)';

(B) by inserting after the second sentence `Such information shall include information on any criminal convictions of the petitioner for any specified crime.';

(C) by striking `Attorney General' and inserting `Secretary of Homeland Security' each place it appears; and

(D) by adding at the end the following:

`(2)(A) Subject to subparagraphs (B) and (C), a consular officer may not approve a petition under paragraph (1) unless the officer has verified that--

`(i) the petitioner has not, previous to the pending petition, petitioned under paragraph (1) with respect to two or more applying aliens; and

`(ii) if the petitioner has had such a petition previously approved, 2 years have elapsed since the filing of such previously approved petition.

`(B) The Secretary of Homeland Security may, in the Secretary's discretion, waive the limitations in subparagraph (A) if justification exists for such a waiver. Except in extraordinary circumstances and subject to subparagraph (C), such a waiver shall not be granted if the petitioner has a record of violent criminal offenses against a person or persons.

`(C)(i) The Secretary of Homeland Security is not limited by the criminal court record and shall grant a waiver of the condition described in the second sentence of subparagraph (B) in the case of a petitioner described in clause (ii).

`(ii) A petitioner described in this clause is a petitioner who has been battered or subjected to extreme cruelty and who is or was not the primary perpetrator of violence in the relationship upon a determination that--

`(I) the petitioner was acting in self-defense;

`(II) the petitioner was found to have violated a protection order intended to protect the petitioner; or

`(III) the petitioner committed, was arrested for, was convicted of, or pled guilty to committing a crime that did not result in serious bodily injury and where there was a connection between the crime and the petitioner's having been battered or subjected to extreme cruelty.

`(iii) In acting on applications under this subparagraph, the Secretary of Homeland Security shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Secretary.

`(3) In this subsection:

`(A) The terms `domestic violence', `sexual assault', `child abuse and neglect', `dating violence', `elder abuse', and `stalking' have the meaning given such terms in section 3 of the Violence Against Women and Department of Justice Reauthorization Act of 2005.

`(B) The term `specified crime' means the following:

`(i) Domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse, and stalking.

`(ii) Homicide, murder, manslaughter, rape, abusive sexual contact, sexual exploitation, incest, torture, trafficking, peonage, holding hostage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, or an attempt to commit any of the crimes described in this clause.

`(iii) At least three convictions for crimes relating to a controlled substance or alcohol not arising from a single act.'

(2) 214(r) AMENDMENT- Section 214(r) of such Act (8 U.S.C. 1184(r)) is amended--

(A) in paragraph (1), by inserting after the second sentence `Such information shall include information on any criminal convictions of the petitioner for any specified crime.'; and

(B) by adding at the end the following:

`(4)(A) The Secretary of Homeland Security shall create a database for the purpose of tracking multiple visa petitions filed for fiance(e)s and spouses under clauses (i) and (ii) of section 101(a)(15)(K). Upon approval of a second visa petition under section 101(a)(15)(K) for a fiance(e) or spouse filed by the same United States citizen petitioner, the petitioner shall be notified by the Secretary that information concerning the petitioner has been entered into the multiple visa petition tracking database. All subsequent fiance(e) or spouse nonimmigrant visa petitions filed by that petitioner under such section shall be entered in the database.

`(B)(i) Once a petitioner has had two fiance(e) or spousal petitions approved under clause (i) or (ii) of section 101(a)(15)(K), if a subsequent petition is filed under such section less than 10 years after the date the first visa petition was filed under such section, the Secretary of Homeland Security shall notify both the petitioner and beneficiary of any such subsequent petition about the number of previously approved fiance(e) or spousal petitions listed in the database.

`(ii) A copy of the information and resources pamphlet on domestic violence developed under section 833(a) of the International Marriage Broker Regulation Act of 2005 shall be mailed to the beneficiary along with the notification required in clause (i).

`(5) In this subsection:

`(A) The terms `domestic violence', `sexual assault', `child abuse and neglect', `dating violence', `elder abuse', and `stalking' have the meaning given such terms in section 3 of the Violence Against Women and Department of Justice Reauthorization Act of 2005.

`(B) The term `specified crime' means the following:

`(i) Domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse, and stalking.

`(ii) Homicide, murder, manslaughter, rape, abusive sexual contact, sexual exploitation, incest, torture, trafficking, peonage, holding hostage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, or an attempt to commit any of the crimes described in this clause.

`(iii) At least three convictions for crimes relating to a controlled substance or alcohol not arising from a single act.'

(3) **EFFECTIVE DATE**- The amendments made by this subsection shall take effect on the date that is 60 days after the date of the enactment of this Act.

(b) **Limitation on Use of Certain Information**- The fact that an alien described in clause (i) or (ii) of section 101(a)(15)(K) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(K)) is aware of any information disclosed under the amendments made by this section or under section 833 shall not be used to deny the alien eligibility for relief under any other provision of law.