

9 FAM 41.81 PROCEDURAL NOTES

*(CT:VISA-1097; 10-31-2008)
(Office of Origin: CA/VO/L/R)*

9 FAM 41.81 PN1 APPLICATION FOR NONIMMIGRANT K VISA

(CT:VISA-1097; 10-31-2008)

- a. The following records and documents are required for presentation at the time of visa application:
- (1) A Form DS-156, Nonimmigrant Visa Application, in duplicate;
 - (2) An original Form DS-156-K, Nonimmigrant Fiancé Visa Application, (Supplement to Form DS-156);
 - (3) Valid passport (except for a person coming under 22 CFR 41.2(a), (b), (h));
 - (4) Birth certificate;
 - (5) Evidence of termination of any prior marriage of beneficiary (if the petition does not indicate that such evidence was previously submitted);
 - (6) Police certificates (in addition to supplying a police certificate from the present place of residence, the applicant must also present police certificates from any place or places of residence for 6 months or more since attaining the age of 16); and
 - (7) Form DS-2053, Medical Examination for Immigrant and Refugee Applicant, in duplicate (a third copy is required if the alien has a Class A or B condition involving tuberculosis).
- b. An accompanying child requires a valid passport (or may be included in the parent's passport), a birth certificate, and a medical examination. If a child is 16 years of age or over, police certificates are required. No chest X-ray or serologic tests are required if the child is under 15 years of age.

- c. If an applicant is utilizing Form DS-160, Electronic Nonimmigrant Visa Application, the original Form DS-156-K, Nonimmigrant Fiancé Visa Application, is not required to be submitted in the application package. The supplemental information fields within Form DS-156-K are already incorporated within Form DS-160. All other above mentioned items are necessary to be submitted at the time the applicant is interviewed.

9 FAM 41.81 PN2 EVIDENCE OF SUPPORT

(TL:VISA-377; 03-20-2002)

A K visa applicant and any accompanying children must meet the public charge requirement of INA 212(a)(15) like any other visa applicant. Evidence of support is usually requested by the consular officer. There is, however, no absolute requirement that an affidavit of support or other public charge documentation be presented. It is only necessary that the consular officer be able to conclude that the alien is not likely to become a public charge. It would not be unusual, therefore, for a healthy alien of working age, applying alone, to be able to establish eligibility during the visa interview without the need for substantiating documentation.

9 FAM 41.81 PN3 PROCESSING OF K VISA APPLICATION

9 FAM 41.81 PN3.1 Timely Visa Issuance

(CT:VISA-901; 08-17-2007)

- a. The interview with the consular officer is the most significant part of the visa issuing process. It is particularly important from the point of view of full and correct application of the law. Section 237 of Public Law 106-113 requires that the Department establish a policy under which fiancé(e) visas be processed within 30 days of receipt of the necessary information from the applicant and the Department of Homeland Security (DHS). The Department expects all posts to strive to meet the 30/60 day requirements.
- b. Since the underlying purpose of the Legal Immigration Family Equity (LIFE) Act is to reunite families, it is important that posts process these cases as quickly as possible. Posts should first process immigrant visas (IV) cases that are current for processing and for which visa numbers are available. The second priority should be V-1 and K-3 applicants and their

children.

9 FAM 41.81 PN3.2 Applicant Informed of Requirement for Visa

(CT:VISA-1097; 10-31-2008)

Upon the receipt of a K visa petition approved by DHS, the consular officer should promptly send to the applicant:

- (1) Form DS-230, Application for Immigrant Visa and Alien Registration;
- (2) Two copies of the Form DS-156; Nonimmigrant Visa Application, or Form DS-160, Electronic Nonimmigrant Visa Application (see 9 FAM 41.103 N2);
- (3) One copy of the Form DS-156-K, Nonimmigrant Fiancé (e) Visa Application;
- (4) One copy of the petitioner's approved Form I-129F, together with any criminal background information (including information on protection orders) that DHS has gathered on the petitioner and any information that DHS has provided regarding prior Form I-129F filings by the petitioner (see 9 FAM 41.81 N13 for more specifics.).
- (5) (Not yet published) When available, a copy of DHS's pamphlet, "Legal Rights and Resources for Immigrant Victims of Domestic Violence: Facts about immigrating to the United States as a Fiancé'(e) (K-1 visa) or as a Spouse (K-3 visa) of an U.S. Citizen."

9 FAM 41.81 PN3.3 Clearance Procedures

(CT:VISA-1097; 10-31-2008)

- a. Upon receipt of the completed Form DS-156, Nonimmigrant Visa Application, Form DS-156-K, Nonimmigrant Fiancé Visa Application, and Form DS-230, Application for Immigrant Visa and Alien Registration, the consular officer should initiate clearance procedures. If the applicant, since attaining the age of 16, has resided for six months or more in a country other than the one of visa application, the security clearance procedures used in immigrant visa (IV) cases are to be followed.
- b. If the applicant utilizes Form DS-160, Electronic Nonimmigrant Visa Application, the consular officer still needs a completed Form DS-230,

Application for Immigrant Visa and Alien Registration, to initiate clearance procedures.

9 FAM 41.81 PN3.4 Interview of Alien to Determine Eligibility

(CT:VISA-1097; 10-31-2008)

- a. The alien is to be invited for an interview when:
 - (1) The alien has reported that all of the necessary documents have been collected; and
 - (2) The medical examination has been completed and the report is or will be available before the interview.
- b. You must direct the interview to determine eligibility as if the alien were applying for an immigrant visa (IV) in the immediate relative category. You must also:
 - (1) Inform the K visa applicant of any protection orders or criminal background information regarding the petitioner that U.S. Citizenship and Immigration Services (USCIS) has reported with an approved K petition. After informing the applicant, give the applicant time to decide whether he or she wishes to proceed with the K visa application, and, in the case of an applicant for a K-1 visa, whether he or she still intends to marry the petitioner within 90 days of entering the United States. Appropriate case notes should be entered into the immigrant visas overseas (IVO) system to indicate that the applicant received notice of the petitioner's criminal background information (see 9 FAM 41.81 N13 for more specifics);
 - (2) Inform the K visa applicant of any previously approved Form I-129-F petitions filed by the petitioner. (You will find this information on the approved Form I-129-F as USCIS annotates approved Form I-129-F petitions to indicate multiple filings.) Make appropriate case notes in IVO;
 - (3) Ask the applicant whether an international marriage broker (IMB) facilitated the relationship with the petitioner and if so, identify the IMB, and then ask if the IMB complied with the International Marriage Broker Regulation Act of 2005 (IMBRA) by providing the applicant with the required disclosures and information. (See 9 FAM 41.81 N13 for the definition of an IMB.) If the IMB did not

provide the required disclosures and information, you should make case notes in IVO on the failure of the IMB to comply with IMBRA and provide that information to the Post Liaison Division (CA/VO/F/P) by email;

- (4) Give the applicant another copy of the DHS pamphlet (when available to posts as it is not yet published by DHS) that they will also receive when the instruction packet is first mailed to them (see 9 FAM 41.81 PN3.2.)
- (5) Obtain the applicant's oath and signature required on the Form DS-156-K, Nonimmigrant Fiancé Visa Application, that certifies the applicant's legal capacity and intent to marry, as stated on the form.

9 FAM 41.81 PN3.5 Procedures for Minor Child or Children of K Visa Applicant

(CT:VISA-1097; 10-31-2008)

- a. If the applicant is to be accompanied by a minor child or children, Form DS-156, Nonimmigrant Visa Application, in duplicate, a medical examination, and a birth certificate are required for each child.
- b. If the applicant utilizes Form DS-160, Electronic Nonimmigrant Visa Application, and is to be accompanied by a minor child or children, a duplicate of Form DS-160, a medical examination, and a birth certificate are still required for each child.

9 FAM 41.81 PN3.6 Visa Fees and Validity

(CT:VISA-1097; 10-31-2008)

- a. There is no additional processing fee for K visas. Applicants will pay only the standard Machine Readable Visa (MRV) fee. There are no separate reciprocity fees.
- b. The K-1 and K-2 visas shall be valid for six months for one entry. The K-3 and K-4 visas shall be valid for multiple entries for 24 months, unless constrained by security clearance requirement or waivers, which are valid for a year or less. Unmarried aliens entering the United States as a K-4 shall be admitted for a period of 24 months or until that alien's 21st birthday, whichever is shorter (see 8 CFR 214.2(k)(8) and 214.2(k)(11)(v)).

9 FAM 41.81 PN4 SUPPORTING DOCUMENTS HAND-CARRIED BY APPLICANT

9 FAM 41.81 PN4.1 Documents Placed in Envelope

(CT:VISA-1097; 10-31-2008)

The following supporting documents should be carried by the applicant in a sealed envelope for presentation at the port of entry:

- (1) The K Visa Petition;
- (2) A Form DS-156, Nonimmigrant Visa Application, or Form DS-160, Electronic Nonimmigrant Visa Application, in duplicate;
- (3) Form DS-156-K, Nonimmigrant Fiancé Visa Application (including the certificate of legal capacity and intent to marry); and
- (4) Form DS-2053, Medical Examination for Immigrant or Refugee Applicant, and all related worksheets.

9 FAM 41.81 PN4.2 "MED" NOTATIONS

(CT:VISA-1097; 10-31-2008)

The K visa should be annotated in the following cases:

- (1) When the medical examination has revealed a Class A tuberculosis or another Class A medical condition, and an INA 212(d)(3)(A) waiver has been granted, the visa should be annotated: "MED: 212(d)(3)(A)."
- (2) When the medical examination has revealed a Class B tuberculosis condition or Class B leprosy, non-infectious, the visa should be annotated: "MED: Class B."

9 FAM 41.81 PN4.3 Child of a K-1

(TL:VISA-324; 10-10-2001)

In the case of children following-to-join the principal alien who are entitled to K-2 classification, the required documents are to be placed in an envelope together with a copy of the approved K visa petition. The children's MRVs should be annotated with the principal alien's name and date of visa issuance. For example, "P/A: Mary Brown, K-1 issued 15AUG2007."

9 FAM 41.81 PN4.4 Child of a K-3

(TL:VISA-324; 10-10-2001)

The unmarried child of a K-3 is entitled to K-4 status and does not need to be the beneficiary of a petition. He or she needs only to establish that the relationship to the principal alien exists.

9 FAM 41.81 PN5 DISPOSITION OF FORM DS-156, NONIMMIGRANT VISA APPLICATION, OR FORM DS-160, ELECTRONIC NONIMMIGRANT VISA APPLICATION

(CT:VISA-1097; 10-31-2008)

Upon issuance of a K visa, you should place one copy of Form DS-156 in the IV envelope presented by the applicant at the port of entry (POE). The second copy of Form DS-156 should be retained with the other nonimmigrant visa applications printed that day. See 9 FAM Appendix F for guidance on storage and retention of Form DS-156 applications. If upon issuance of a K visa, the applicant utilizes Form DS-160, Electronic Nonimmigrant Visa Application, post should print one copy of Form DS-160 to place in the IV document envelope presented by the applicant at the POE.

9 FAM 41.81 PN6 REVALIDATION OF FIANCÉ(E) PETITION

(CT:VISA-1097; 10-31-2008)

When a K visa petition is revalidated, the notation "Revalidated to (date)" should be placed in the "Remarks" block of the petition over the signature and title of the consular officer. The date of the revalidation should also be shown.

9 FAM 41.81 PN7 SOCIAL SECURITY REGISTRATION

(CT:VISA-1097; 10-31-2008)

Even though a fiancé(e) is treated in most respects like an immigrant, posts

do not give a fiancé(e) the information regarding Social Security registration. DHS will do this at the time of the alien's adjustment of status.