

9 FAM 41.81 FIANCE(E) OF A U.S. CITIZEN

*(CT:VISA-970; 06-12-2008)
(Office of Origin: CA/VO/L/R)*

9 FAM 41.81 RELATED STATUTORY PROVISIONS

(CT:VISA-970; 06-12-2008)

See INA 101(a)(15)(K) (8 U.S.C. 1101(a)(15)(K)), INA 214(d) (8 U.S.C. 1184(d)), INA 245(d) (8 U.S.C. 1255(d)), Sec. 237 of Public Law 106-113 and Public Law 106-553.

INA 101(a)(15)(K)

- (15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens
 - (K) 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 (other than a citizen described in section 204(a)(1)(A)(viii)(I)) 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 (other than a citizen described in section 204(a)(1)(A)(viii)(I)) 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

INA 214(d)

d. Issuance of visa to fiancée or fiancé of citizen

- (1) A visa shall not be issued under the provisions of section 101(a)(15)(K)(i) of this title until the consular officer has received a

petition filed in the United States by the fiancée and fiancé of the applying alien and approved by the Secretary of Homeland Security. The petition shall be in such form and contain such information as the Secretary of Homeland Security shall, by regulation, prescribe. 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 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 of this title.

- (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.

INA 245(d)

- d. The Attorney General may not adjust, under subsection (a), the status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 216. The Attorney General may not adjust, under subsection (a), the status of a nonimmigrant alien described in section 101(a)(15)(K) except to that of an alien lawfully

admitted to the United States on a conditional basis under section 216 as a result of the marriage of the nonimmigrant (or, in the case of a minor child, the parent) to the citizen who filed the petition to accord that alien's nonimmigrant status under section 101(a)(15)(K).

9 FAM 41.81 RELATED REGULATORY PROVISIONS

(CT:VISA-970; 06-12-2008)

See 22 CFR 41.81

41.81 Fiancé(e) or spouse of a U.S. citizen and derivative children.

- (a) Fiancé(e). An alien is classifiable as a nonimmigrant fiancé(e) under INA 101(a)(15)(K)(i) if:
 - (1) The consular officer is satisfied that the alien is qualified under that provision and the consular officer has received a petition filed by a U.S. citizen to confer nonimmigrant status as a fiancé(e) on the alien, which has been approved by the DHS under INA 214(d), or a notification of such approval from that Service;
 - (2) The consular officer has received from the alien the alien's sworn statement of ability and intent to conclude a valid marriage with the petitioner within 90 days of arrival in the United States; and
 - (3) The alien has met all other qualifications in order to receive a nonimmigrant visa, including the requirements of paragraph (d) of this section.
- (b) Spouse. An alien is classifiable as a nonimmigrant spouse under INA 101(a)(15)(K)(ii) when all of the following requirements are met:
 - (1) The consular officer is satisfied that the alien is qualified under that provision and the consular officer has received a petition approved by the DHS pursuant to INA 214(p)(1), that was filed by the U.S. citizen spouse of the alien in the United States.
 - (2) If the alien's marriage to the U.S. citizen was contracted outside of the United States, the alien is applying in the country in which the marriage took place, or if there is no consular post in that country, then at a consular post designated by the Deputy Assistant Secretary of State for Visa Services to accept immigrant visa applications for nationals of that country.

- (3) If the marriage was contracted in the United States, the alien is applying in a country as provided in part 42, §42.61 of this chapter.
 - (4) The alien otherwise has met all applicable requirements in order to receive a nonimmigrant visa, including the requirements of paragraph (d) of this section.
- (c) Child. An alien is classifiable under INA 101(a)(15)(K)(iii) if:
- (1) The consular officer is satisfied that the alien is the child of an alien classified under INA 101(a)(15)(K)(i) or (ii) and is accompanying or following to join the principal alien; and
 - (2) The alien otherwise has met all other applicable requirements in order to receive a nonimmigrant visa, including the requirements of paragraph (d) of this section.
- (d) Eligibility as an immigrant required. The consular officer, insofar as is practicable, must determine the eligibility of an alien to receive a nonimmigrant visa under paragraphs (a), (b) or (c) of this section as if the alien were an applicant for an immigrant visa, except that the alien must be exempt from the vaccination requirement of INA 212(a)(1) and the labor certification requirement of INA 212(a)(5).

[66 FR 19393, Apr. 16, 2001]