9 FAM 502.7-3(B) (U) Overview of K Visa Classifications

(CT:VISA-1256; 03-25-2021)

a. **(U)** The fiancé(e) K-1 nonimmigrant visa is for the foreign citizen fiancé(e) of a U.S. citizen. The K-1 visa permits the foreign citizen fiancé(e) to travel to the United States and marry his or her U.S. citizen sponsor within 90 days of arrival. Eligible children of K-1 visa applicants receive K-2 visas.

b. **(U)** The K-3 nonimmigrant visa is for the foreign citizen spouse of a U.S. citizen. This visa category is intended to shorten the time the foreign citizen and U.S. citizen spouses must be separated by providing the option to obtain a nonimmigrant visa and enter the United States to await approval of the immigrant visa petition. Eligible children of K-3 visa applicants receive K-4 visas.

c. **(U) Classification under** INA 101(a)(15)(K)**:**

(1) **Classification under** INA 101(a)(15)(K)(i) **(Fiancé(e) of U.S. Citizen – K-1):**

(a) **(U) Fiancé(e):** An alien may be classified as a K-1 if he or she is the beneficiary of an approved Form I-129F, Petition for Alien Fiancé(e), for issuance of a nonimmigrant visa. If you are satisfied that the alien is qualified to receive such a visa, the alien may be admitted to the United States for the purpose of concluding a marriage to the petitioner within a 90-day period.

(b) **(U) Alternative Classification:** The inclusion of INA 101(a)(15)(K) in the nonimmigrant classifications is not intended to prohibit an alien fiancé(e) of a U.S. citizen from applying for and obtaining an immigrant visa or a nonimmigrant visa under another classification, if the alien qualifies for an alternative classification. For example, an alien who seeks to enter the United States to marry a U.S. citizen may be classified B-2, if it is established that following the marriage the alien will depart from the United States. (See 9 FAM 402.2-4(B)(1).)

(2) **(U) Classification under** INA 101(a)(15)(K)(ii) **(Spouse of U.S. Citizen – K-3):** Public Law 106-553 established a new category of nonimmigrant visa for the spouses of U.S. citizens who await approval of a Form I-130, Petition for Alien Relative, to enter the United States as nonimmigrants. The symbol for the beneficiaries of this category is K-3.

(3) **(U) Classification under** INA 101(a)(15)(K)(iii) **(Child of K-1 – K-2, and Child of K-3 – K-4):**

(a) **(U)** This provision is for the children of either a K-1 or a K-3. An accompanying or following-to-join child (as defined in INA 101(b)(1)) of a K-1 is entitled to K-2 derivative status. The child of a K-3 who is accompanying or following-to-join a K-3 principal alien is entitled to K-4 derivative status.

(b) **(U) Time Limit for Child of K-1 Fiancé(e):** USCIS and the Department have agreed that the child of a K-1 principal alien may be accorded K-2 status if following to join the principal alien in the United States even after the principal alien has married the U.S. citizen fiancé(e), and acquired Lawful Permanent Resident (LPR) status. However, the cutoff date for issuance of a K-2 visa is one year from the date of the issuance of the K-1 visa to the principal alien. For the purpose of calculating the one-year period, the date

of printing shall be considered the date of issuance. After one year, the U.S. citizen petitioner or the alien, (prior K-1 visa holder), if qualified, must file an immediate relative or second preference petition for the K-1's child. With the exception of paragraph (d) below, no additional exceptions are possible.

(c) **(U) Time Limit for Child of K-3:** USCIS and the Department have agreed that the child of a K-3 principal alien may be accorded K-4 status if following to join the principal alien in the United States even after the principal alien has acquired LPR status. However, the cutoff date for issuance of a K-4 visa is one year from the date of the issuance of the K-3 visa to the principal alien. For the purpose of calculating the one-year period, the date of printing shall be considered the date of issuance. After one year the U.S. citizen petitioner or the alien, (prior K-3 visa holder), if qualified, must file an immediate relative or second preference petition for the K-3's child. No extensions are possible, regardless of circumstances.

(d) **(U) Temporary Extension of Time Limit for Certain K-2 Applicants/Visa holders Child During COVID-19 Pandemic from 12 Months to 18 Months:** DOS will extend following-to-join eligibility for K-2 applicants whose one-year eligibility to follow-to-join expired before they were able to obtain a visa or whose previously issued visa expired before they were able to effect travel to the United States as a direct result of:

(i) **(U)** the worldwide routine suspension of routine visa services;

(ii) **(U)** the suspension of entry to the United States based on physical presence in one of the countries designated by presidential proclamation;

(iii) **(U)** COVID-19 related travel restrictions imposed by the host government; or

(iv) **(U)** other factors caused by the COVID-19 outbreak which were beyond the applicant’s control and for which the applicant was not responsible.

(U) Note: Posts may extend the period of follow-to-join eligibility for K-2 applicants six additional months (180 days) for any K-2 applicant who, due to one of the four factors outlined above, has either been unable to apply for a visa within one year of their K-1 principal receiving their visa or has been unable to travel to the United States on a previously issued K-2 visa. This relief does not affect rules related to fees or fee collection, age-out restrictions, or other eligibility factors for K-2 status. Posts with questions about making these calculations should contact their CA/VO/F and L/CA post liaisons. This relief will expire six months after COVID-19 related travel restrictions have ended and post has resumed processing K visa appointments on a regular basis.

d. **(U) K Visa Petitions:**

(1) **(U) Filing Form I-129F, Petition for Alien Fiancé(e) (K1):**

(a) **(U) Fiancé(e) Petition:** Form I-129F, Petition for Alien Fiancé(e), may not be filed with, or approved or denied by, a consular officer or an immigration officer stationed abroad. All K visa petitions must be filed with USCIS in the United States. If the citizen fiancé(e) is abroad at the time the K visa petition is filed, you should advise the petitioner to review USCIS′ website for

information on how to submit the completed petition, supporting documents, and appropriate fee to USCIS. After the petition is approved, USCIS will transmit it to NVC, which will alert the appropriate post.

(b) **(U) Validity of a K-1 Petition:** An approved K-1 visa petition is valid for a period of four months from the date of USCIS action. However, *you* may revalidate the petition any number of times for additional periods of four months from the date of revalidation, provided *you conclude* that the petitioner and the beneficiary remain legally free to marry and continue to intend to marry each other within 90 days after the beneficiary's admission into the United States. However, the longer the period of time since the filing of the petition, the greater the concern about the intentions of the couple, particularly the intentions of the petitioner in the United States. If *you are* not convinced that the U.S. citizen petitioner continues to intend to marry the beneficiary, including instances where no action has been taken on the application for a year (while refused under INA 221(g)), the petition should be returned to the approving office of USCIS with an explanatory memorandum. (See 9 FAM 502.7-3(B) paragraph d(5)) below for revalidation procedure.)

(2) **(U) Petition for Classification under** INA 101(a)(15)(K)(ii) **(K3):**

(a) **(U)** An alien seeking admission under INA 101(a)(15)(K)(ii) must be the beneficiary of a K-3 petition filed by a U.S. citizen in the United States. USCIS is using the usual Form I-129F, Petition for Alien Fiancé(e), for this purpose. As noted in 9 FAM 502.7-5(C)(1) paragraph c, if the couple married outside the United States, the visa must be issued by a consular officer in the foreign state in which the marriage was effected.

(b) **(U)** In order to file an I-129F petition for a K-3 visa, the petitioner must first file an I-130 Petition for an Alien Relative with USCIS. USCIS will send the petitioner an I-797 receipt confirming that the I-130 petition has been received. Only then can the petitioner proceed to file the I-129F petition for the K-3. When an I-130 and an I-129F for the same petitioner and beneficiary are filed with the same USCIS service center, USCIS will only proceed with the adjudication of the I-130 petition.

(3) **(U) No Petition for Child of K-1 or K-3:** The unmarried child of a K-1 or K-3 applicant does not require a petition. The applicant needs only to demonstrate that he or she is the "child" (as defined in INA 101(b)(1)) of an alien classified K-1 or K-3. K-2 or K-4 applicants are required to sign a form apprising them that entering into a marriage prior to obtaining adjustment of status will render them ineligible for adjustment in the IR-2 or CR-2 category.

(4) **(U) Termination of K Visa Petition Approval:** USCIS regulations (8 CFR 214.2(k)) provide that the death of a petitioner or written withdrawal of the petition prior to the arrival of the beneficiary in the United States automatically terminates the approval of the petition. You should return the petition to the approving USCIS office with an appropriate memorandum via the NVC. If the petition has not been automatically terminated but the applicant chooses not to pursue the visa while the petition is still valid (or if no response is received within 60 days if the petition has expired and the applicant does not respond to post's letter per 9 FAM 502.7-3(C)(2) paragraph b below), the petition should be treated as inactive and destroyed after one year.

(5) **(U) Revalidation of Fiancé(e) Petition:** When a K visa petition is revalidated as described in 9 FAM 502.7-3(B) paragraph d(1)(b) above, the notation "Revalidated to (date)" should be placed in the "Remarks" block of the petition over *your* signature and title. The date when the revalidation was processed should also be shown.