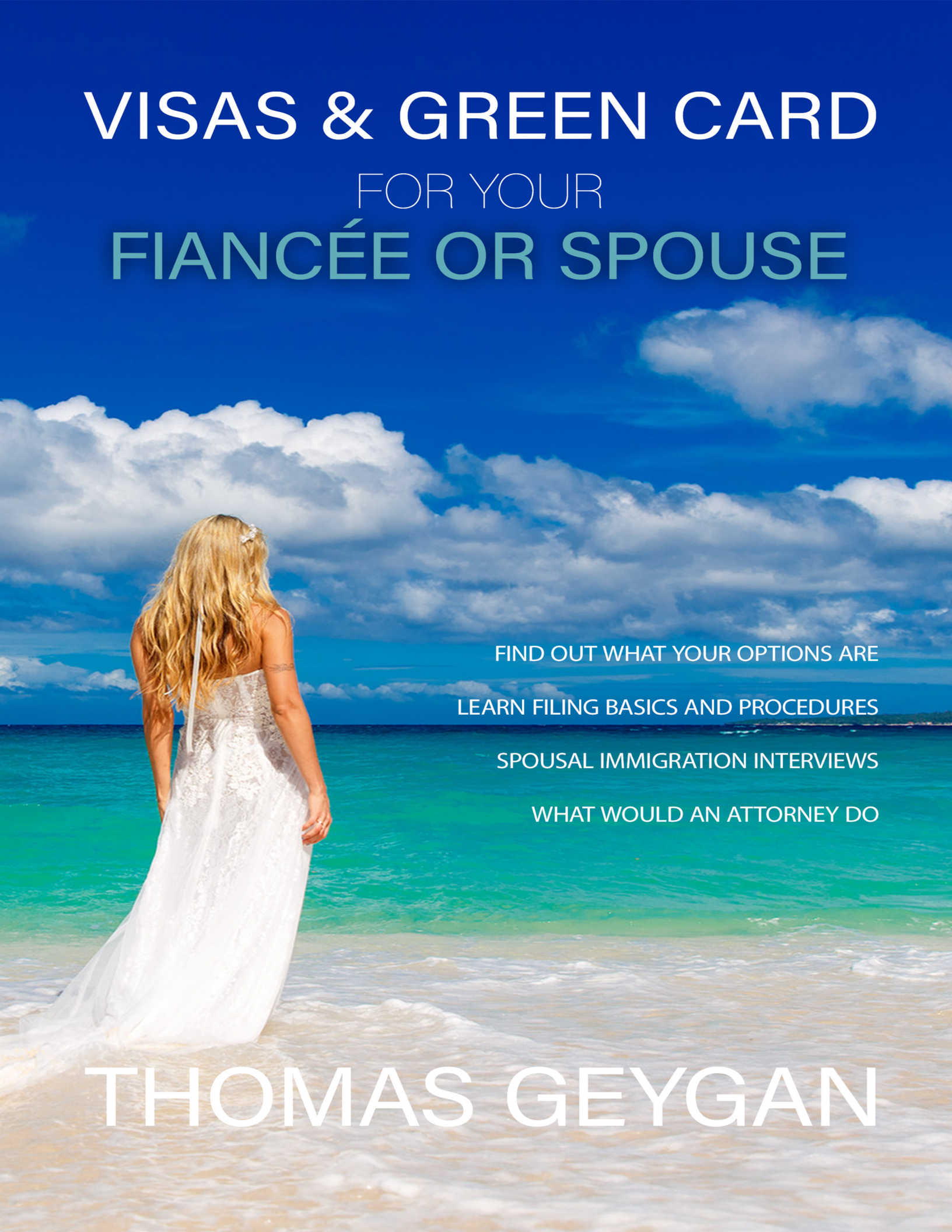
VISAS & GREEN CARD FOR YOUR FIANCÉE OR SPOUSE



FIND OUT WHAT YOUR OPTIONS ARE

LEARN FILING BASICS AND PROCEDURES

SPOUSAL IMMIGRATION INTERVIEWS

WHAT WOULD AN ATTORNEY DO

THOMAS GEYGAN

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GEYGAN & GEYGAN, LTD.

8050 Hosbrook Road, Suite 107
Cincinnati, Ohio 45236
Tel: 513-791-1673
Fax: 513-791-1683
ThomasJr@geygan.com

http://geygan.net

Why I do what I do

I do what I do because I do not want anyone else to have the problems in their immigration process that my wife and I had. On December 30, 1988, my wife and I got married in Honduras. At that time, I was in the U.S. Air Force, working at the joint U.S. and Honduran base, as well as out of the U.S. Embassy in Tegucigalpa. My wife was working out of the base as a pharmacy technician for the United States Army. She was one of the first civilian employees hired by the base. We had to jump through many hoops because of our positions on the base. We had mandatory interviews with the base chaplain, a medical doctor from the hospital and the finance officer. These were all people who knew my wife and me, and thought very highly of both of us. Once we overcame these obstacles, we then had permission to marry from the U.S. military.

Immigration lawyer with over 19 years of experience, specializing in Family Based Immigration, Investment Based Immigration, and Citizenship cases.

Tom Geygan is the chief immigration lawyer for Geygan & Geygan, Ltd. a Cincinnati based law firm providing reliable immigration solutions to individuals and families. With more than 19 years of practicing immigration law, Tom has become one of the most trustworthy lawyers to turn to when it comes to getting your immigration cases resolved!

Professional Career and Law Expertise

Before becoming a lawyer, Tom Geygan provided technical support to some of the top mutual funds in the United States. Finding himself interested in law, he pursued the work after retirement, and almost two decades later, he is still a practicing law professional. Tom's dedication to his field of work is apparent from the milestones he has managed to achieve. He has published multiple articles about immigration, appeared on local television discussing immigration cases and issues, and has taught classes to local and international groups of lawyers on U.S. immigration laws. Apart from such miscellaneous work he did out of pure passion, his professional portfolio is also rich in experience and dedication. Tom Geygan has successfully helped countless individuals and families overcome their immigration challenges and has brought his practice before all United States Citizenship and Immigrations Services (USCIS) field offices, immigration courts, Ohio courts, and Sixth Circuit Court of Appeals. Tom Geygan is also a member of American Immigration Lawyers Association, Ohio State Bar Association, Cincinnati Bar Association, the Hispanic Chamber of Commerce and many other organizations that support civil rights and veterans' rights programs.

Tom's Approach to His Practice

Tom Geygan's excellence as a practicing lawyer has stemmed from the personalized level of service he provides his clients. Tom believes in offering a friendly and comfortable service so he can better understand his clients and focus on their case from a more personal perspective. He combines his professional expertise with personal insight about immigration laws to deliver a service that is truly optimized to work in the best interest of his clients. Fast turnarounds and the fact that no immigration case it too complicated for Tom Geygan are elements from which all his clients benefit. All clients want their cases resolved quickly and easily by an expert who knows what he's doing—and that is precisely the kind of service Tom Geygan offers to clients of his law firm.

To get in touch with Tom Geygan for any information or questions, he can be contacted at **ThomasJr@geygan.com** or 513-791-1673.

About Geygan & Geygan, Ltd.

Geygan & Geygan, Ltd. is a law firm based in Cincinnati providing professional and experienced immigration law services to families and individuals. Spearheaded by Tom Geygan, a refined immigration lawyer with almost two decades of professional experience, the firm has the talent and competency to take on any immigration case, be it citizenship, family immigration, immigrant and nonimmigrant status, investment or anything else.

Mission Statement

To provide professional, yet friendly, immigration law services to clients with any kind of immigration case, without compromising on timeliness, affordability, or reliability.

Immigration law is being enforced all over the country, which makes it one of the major legal tenets dealt with on a federal basis. We understand there are countless people dealing with immigration problems or case filings in need of legal help that not only appreciates their immigration situation but also helps resolve their cases. Geygan & Geygan aims to become that firm for people in Cincinnati, helping them extensively and thoroughly with all their legal immigration cases. With us, no case is too complicated—we give each and every case a personalized level of attention that prioritizes clients' best interests.

Our Values

Geygan & Geygan is a firm with an ethical approach, focused on values of integrity, transparency, reliability, discipline, and friendliness. All of these values define the law firm and its chief attorney ideally—so clients always know what kind of service to expect. If you would like to get in touch with the attorneys at Geygan & Geygan, they can be contacted at 513-791-1673.

PS. Once you've gone through this e-book and you want to discuss your immigration plans call my office at 513-791-1673 or at http://geygan.net/calendar-30-min/

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CONTENTS, CONTINUED

K-1 FIANCÉ(E) STATUS/VISA

The K-1 category permits the fiancé(e) of a U.S. citizen petitioner to enter the United States for a 90-day period to marry the U.S. citizen and apply for permanent residence. Because it facilitates the entry of an intending immigrant, K visa processing is similar to immigrant visa processing for immediate relatives. Additionally, K visa processing can take longer than processing for other nonimmigrant visas as it entails the submission and consideration of comprehensive biographical and admissibility data at two stages of the process.

Basic Requirements

A U.S. citizen files a petition with the appropriate Department of Homeland Security (DHS) office in the United States. The petition must present satisfactory evidence that the fiancé(e) and the U.S. citizen petitioner:

- Have previously met in person within two years of the date of filing the petition, unless a waiver is granted;
- Have a bona fide intention to marry; and
- Are legally able and actually willing to conclude a valid marriage in the United States within 90 days after the fiancé(e)'s arrival.

If you do not marry within 90 days, your fiancé(e) (and any dependents) will be required to depart, and failure to depart renders them removable (deportable).

Key Considerations

The "Previous Meeting" Requirement

The law requires that you and your fiancé(e) meet personally within two years prior to filing the petition. The law gives the attorney general discretion to waive this requirement, but provides no specific guidelines. As interpreted in DHS regulations, the personal meeting requirement may be waived upon proof that compliance would:

- Result in extreme hardship to the petitioner; or
- Violate strict and long-established customs of the 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.

The law requires that you and your fiancé(e) meet personally within **two** years prior to filing the petition.

A denial of the K petition for failure to meet or obtain a waiver would not affect your right to the filing of a subsequent petition after you two have met.

Freedom to Marry

Both of you must be free to marry and must intend to enter into a valid marriage within 90 days immediately following your fiancé(e)'s entry into the United States. Thus, we must show that any prior marriages have terminated, and there may not be any other prohibition against the proposed marriage (e.g., marriages that violate existing laws).

Mandatory Submission of Information Pursuant to IMBRA

The law was amended by the International Marriage Broker Regulation Act of 2005 (IMBRA) to mandate the reporting of certain information to the fiancé(e) about the U.S. citizen petitioner. In essence, IMBRA was enacted to address issues of domestic violence and abuse so as to protect K visa beneficiaries from possible violent petitioners. This law applies to all **I-129F** petitions for K status filed on or after March 6, 2006.

Convictions for Certain Crimes

A petitioner for a K-1 fiancé(e) must submit with the Form **I-129F**, information on any convictions of the petitioner for certain "specified crimes." Such crimes include, but are not limited to, "domestic violence," "sexual assault," "child abuse and neglect," "dating violence," "elder abuse," and "stalking." The petitioner is required to submit certified copies of all court and police records showing the charges and dispositions for every such conviction. This is required even if the petitioner's records were sealed or otherwise cleared. The consulate officer will disclose this information to the fiancé(e) during the consular interview.

International Marriage Brokers

IMBRA also mandates the regulation of international marriage brokers. Consequently, K-1 petitioners are required to inform U.S. Citizenship and Immigration Services (USCIS) if they met their fiancé(e) or spouse through the services of an international marriage broker and to provide information about the broker on Form **I-129F**. IMBRA defines a marriage

broker as any legal entity or individual "that charges fees for providing dating, matrimonial, matchmaking services, or social referrals between U.S. citizens or nationals or aliens lawfully admitted to the United States as permanent residents and foreign national clients by providing personal contact information or otherwise facilitating communication between individuals."

Filing Limitations

IMBRA imposes limitations on the number of petitions a K-1 petitioner may file or have approved without seeking a waiver. If the petitioner has filed two or more K-1 visa petitions at any time in the past, or previously had a K-1 petition approved within two years prior to the filing of the current petition, the petitioner must request a waiver.

General Waiver

A request for waiver may be presented with the **I-129F** by attaching a signed and dated letter, requesting the waiver and explaining why a waiver would be appropriate under the circumstances, together with any evidence in support of the request. The secretary of DHS has the discretion to waive the applicable time and/or numerical limitations if in his or her estimation justification exists for the waiver, except where the petitioner has a history of violent criminal offenses against a person.

Extraordinary Circumstances Waiver in Cases Involving a History of Violent Offenses

Where there is a history of violent offenses, the limitations may not be waived unless the petitioner can demonstrate extraordinary circumstances. The secretary of DHS has the sole discretion to determine the credibility of the evidence and the weight to be accorded to such evidence.

Mandatory Waiver in Cases with a History of Violent Offenses Where Petitioner Was Subjected to Battery or Extreme Cruelty

IMBRA mandates that the secretary of DHS approve a waiver request if the petitioner can establish that he or she:

- Was battered or subjected to extreme cruelty by his or her spouse, parent, or adult child at the time he or she committed the violent offense(s); and
- Was not the primary perpetrator of violence in the relationship;
- Was acting in self defense;
- Violated a protective order intended for his or her protection; or
- Was convicted or pleaded guilty to committing a crime that did not result in serious bodily injury and there was a connection between the crime committed and the battery or extreme cruelty.

Mandatory Tracking

IMBRA requires USCIS to track repeated petitions for K visas. Once a petitioner has two approved petitions for a K-1 or K-3, if the petitioner files a third petition less than 10 years after the date the first petition was filed, USCIS must notify both the petitioner and the fiancé(e) of the number of previously approved fiancé(e) or spousal petitions.

Adam Walsh Act Prohibition Against Filing Family-Based and I-129F Visa Petitions

The law renders any K nonimmigrant visa or family-based immigrant visa petitioner ineligible for filing if that petitioner has been convicted of a "specified offense against a minor". A petitioner who has been convicted of a specified offense against a minor is not simply prohibited from filing on behalf of a minor child. The petitioner is prohibited from filing on behalf of "any" fiancé(e) and many other family-based beneficiaries. "

The term "specified offense against a minor" means an offense against a minor (defined as an individual who has not attained the age of 18 years) that involves any of the following:

- An offense (unless committed by a parent or guardian) involving kidnapping;
- An offense (unless committed by a parent or guardian) involving false imprisonment;
- Solicitation to engage in sexual conduct;
- Use in a sexual performance;
- Solicitation to practice prostitution;
- Video voyeurism;
- Possession, production, or distribution of child pornography;
- Criminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt such conduct; or
- Any conduct that by its nature is a sex offense against a minor.

Consular posts are instructed to return to the National Visa Center (NVC) any petition filed by a person who has been convicted of one of the offenses set forth in the law. This bar against filing a petition will not apply if the Secretary of Homeland Security determines that the petitioner poses no risk to the beneficiary. If the petition reflects a "no-risk determination" and the consular officer intends to approve the visa application, the consular officer should nonetheless notify the beneficiary of such convictions.

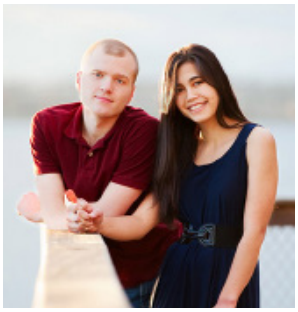
Procedural Considerations

Place of Filing the Petition

The K-1 visa petition is filed by the petitioner "with the director having administrative jurisdiction over the place where the petitioner is residing in the United States."

The appropriate "director" for purposes of adjudicating K petitions is the appropriate USCIS regional service center director. The K-1 petition may not be filed with or considered by the consulate abroad; however, a citizen abroad can execute the visa petition before a consular or immigration officer there and then forward the completed application to the appropriate USCIS office in the United States.

The K-1 Petition and Supporting Documents



The K-1 petition is filed on Form **I-129F** and must include color photographs of each of you and a signed USCIS Form **G-325A** for both you and your fiancé(e). The petition must be supported by proof that the two of you have met in person within two years before filing; intend to marry; are legally able to marry, including proof of the legal termination of any prior marriages of either; and are willing to marry within the 90-day period. Affidavits from each of you and persons with personal knowledge of your relationship, dated photographs showing the two of you together, correspondence between you and your fiancé(e) by letter or e-mail, telephone bills, receipt for engagement ring, documentation of wedding plans (such as invitations and receipt for deposit for a party hall), and similar types of evidence are very valuable in establishing these requirements.

Upon receipt of the petition, USCIS creates an "A" file for your fiancé(e). On approval, USCIS sends the petition to the appropriate consular post, which is usually the consulate located in the country where your fiancé(e) resides. An approved petition remains valid for four months from the date of USCIS action. A consular officer may revalidate the approved petition for additional four-month periods upon proof that you two are free to and intend to marry within the 90-day period. An approved K-1 petition is automatically terminated if you die or withdraw the petition before your fiancé(e) arrives in the United States.

K-2 Dependents

The minor unmarried children of your fiancé(e) who are listed in the petition may be accorded K-2 status if accompanying or following to join your fiancé(e). Neither a separate petition nor a separate filing fee is required.

The Visa Process

Visa Application

Upon receipt of an approved petition from USCIS, the consulate generally issues a letter to your fiancé(e) outlining the steps for visa application. Since the K-1 nonimmigrant seeks to enter the United States ultimately to apply for immigrant status, he or she must present the following documents, some of which can take considerable time to obtain:

- Form DS-156 (in duplicate) and supplement (single copy), which the consulate sends to the applicant upon receipt of the approved petition;
- Valid passport;
- Birth certificate;
- Evidence of the termination of prior marriages (even if such evidence was a required part of the underlying petition);
- Police certificates, if available, from the beneficiary's present place of residence and any place in which he or she has resided for six months or more since reaching age 16;
- Form DS-157 medical examination record; and
- Evidence of available financial resources to demonstrate that the beneficiary will not become a public charge.

Clearance Procedures, Interview, and Visa Issuance

Upon receipt of the requisite documents, the consular officer initiates clearance procedures, requesting priority handling and a response within 30 days. When security clearances have been completed, the consular officer interviews your fiancé(e) to determine eligibility as if your fiancé(e) were applying for an immigrant visa as an immediate relative. If the consular officer finds your fiancé(e) to be eligible, he or she issues the K visa, valid for six months and a single entry, without charge and without requiring fingerprints. The consular officer then seals the petition and all supporting documents in an envelope and gives it to your fiancé(e) for presentation at the port of entry.

Processing Issues

Factual Inconsistencies—If the consular officer finds that your fiancé(e)'s marital history is inconsistent with statements in the petition, or that children of your fiancé(e) were not named in the petition, he or she is required by law to suspend action and return the petition initially to the NVC for reconsideration with a memorandum of findings.

Pregnancy of Your Fiancé(e)—Where the beneficiary is pregnant and this condition is not disclosed on the petition, the consular officer should confirm that you are aware of the pregnancy and solicit your desire to proceed with the case. If the consular officer is satisfied in this regard, he or she need not return the petition.

Multiple Petitions—When multiple petitions are received for the same fiancé(e), the consular officer is to suspend action and return the petitions to the NVC. The NVC will then forward it to USCIS for reconsideration with a memorandum of findings. USCIS then must interview each of the parties, and if no one wishes to withdraw, the burden falls to the officer to enter an appropriate order.

Grounds of Inadmissibility—The regulations direct consular officers to determine eligibility for the K-1 visa as if the alien were applying for an immigrant visa. If the consular officer determines that your fiancé(e) would be inadmissible as an immigrant on grounds for which no waiver is available after marriage to you, the visa is to be refused. However, if the consular officer determines that a waiver would be available to your fiancé(e) once married, the consular officer may return the petition to USCIS for reconsideration. Before initiating this waiver process, however, the consular officer should first ensure

Upon your marriage within 90 days of arrival, your fiancé(e) must apply for adjustment to permanent residence. If the marriage does not occur within 90 days, your fiancé(e) must leave the United States or remain subject to removal.

that you were or are aware of the ineligibility and still wish to pursue the marriage. If not, the petition should be returned to the NVC and no waiver process commenced. If USCIS reaffirms the approval, the consular officer should assist your fiancé(e) in completing the Form **I-601** waiver application and simultaneously submit the **I-601** and Form **OF-221**, two-way visa action request and response, to the appropriate USCIS office. Upon a favorable determination, the waiver will be granted conditional upon your fiancé(e) concluding a valid marriage with you within 90 days of arrival in the United States. Note that reconsideration by USCIS and processing a waiver application will further delay the issuance of the K-1 visa.

Admission to the United States and Adjustment of Status

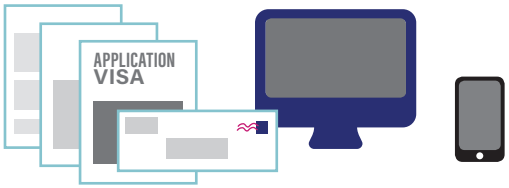
K-1 nonimmigrants are admitted with a single entry visa for 90 days to marry the petitioner. Employment may be authorized during this period. The general rules regarding visa-exempt persons do not apply to K nonimmigrants, who must be in possession of a valid visa. Additionally, K nonimmigrants are ineligible for an extension of stay or change of status.

Upon your marriage within 90 days of arrival, your fiancé(e) must apply for adjustment to permanent residence. If the marriage does not occur within 90 days, your fiancé(e) must leave the United States or remain subject to removal. The 90-day rule is critical because the only ground on which a K fiancé(e) may adjust status is marriage to the petitioner.

The minor unmarried children of your fiancé(e) who have been admitted in K-2 status may adjust status to conditional permanent residence.

SERVICES PERFORMED DURING A TYPICAL FIANCÉ(E) CASE:

- Examine your unique facts in order to identify any problems or issues, and discuss with you the best approach in dealing with those problems or issues.
- Create an online account for you and your fiancé(e) to be able to follow your case process, upload and download questionnaires, forms and supporting documents. We have created this to eliminate most of the time lost with international mailings.
- Prepare your **I-129F** Petition For Alien Fiancé(e) and the biographic forms for both you and your fiancé(e).
- Prepare attorney-certified copies of your original documents for submission to the USCIS and return the original documents to you.
- Prepare the petitioner's Affidavit of Support for your fiancé(e) to hand carry to his or her visa interview (There is an additional attorney fee to prepare an affidavit for a cosponsor, if needed).
- Prepare your and your fiancé(e)'s personal declarations as to your intent to marry.
- Prepare an attorney cover letter for your **I-129F** submission and combine it with the USCIS forms, declarations and evidence to create a well-documented submission that avoids novice mistakes, and submit it to the appropriate USCIS Service Center.
- Make a request with your **I-129F** submission that the USCIS Service Center send cable notification to the U.S. Consulate upon the approval of your petition.
- Mail the receipt notice to you and show you how you can use the USCIS website to monitor the processing of your case.
- Show you how to use the USCIS processing time reports to determine if your case is taking too long.



- Monitor the progress of your petition with the USCIS Service Center and contact them if they make any errors or are not processing as fast as they should.
- Supply you with copies of all correspondence sent to my office from the USCIS about your case.
- Contact the USCIS to resolve any mistakes they might make during the processing of your petition.
- Upon arrival of the approval notice, immediately ship to the U.S. Consulate an attorney-certified copy of the approval notice, a complete attorney-certified copy of the entire fiancé(e) submission, along with a letter and official notice of representation form identifying myself as your attorney of record requesting they include this material in your fiancé(e)'s file, and dispatch "packet 3" to your fiancé(e) if they have not already done so and if they are willing to do so.
- Contact the U.S. Consulate to resolve any mistakes they made during the processing of your fiancé(e)'s application for the K-1 visa.
- Prepare a new declaration for you to sign (which your fiancé(e) will have on hand at the visa interview) which states you are still legally free to marry and that you still intend to marry your fiancé(e) within 90 days of your fiancé(e)'s entry into the USA.
- Supply information and tips to help your fiancé(e) prepare for the visa interview and to help your fiancé(e) avoid making mistakes.
- Be there throughout the entire process to answer your or your fiancé(e)'s questions about the USCIS and/or Consular processing as they come up.

IMMIGRANT SPOUSAL OPTIONS

There are two methods of spousal immigration which confer Lawful Permanent Resident (LPR) status on the foreign spouse beneficiary (a.k.a. a green card)—one based on marriage to a U.S. citizen, and one based on marriage to a LPR.

Based on Marriage to U.S. Citizen

A U.S. citizen can marry a foreign spouse and then petition to bring that foreign spouse to, or keep the foreign spouse in, the United States (as the case may be) in LPR status based on the marriage. In such a scenario, the foreign spouse beneficiary would be classified as an immediate relative, and would not be subject to any delay occasioned by priority dates and the immigrant preference classification system discussed earlier.

To accomplish this, the U.S. citizen must file a Form **I-130**. The central purpose of the Form **I-130** and its supporting evidence, is that the couple demonstrates the "bona fide nature of their marriage." Thus, they should submit the following in support of their application:

- certified copy of the marriage certificate (with translation, if necessary);
- pictures from the wedding; announcements from the wedding; receipts for wedding expenses;
- contracts for the reception or with other wedding vendors;
- the wedding program and invitations; engagement announcements;
- save the date announcements, etc.;
- receipts for the wedding/engagement rings;
- e-mails and/or letters between the couple;
- phone records demonstrating regular conversations between the couple;
- plane tickets showing visits between the couple;
- and sworn affidavits or declarations from the couple and a few close friends or relatives attesting to the relationship and the marriage.
- Additional evidence, if available, includes documents showing joint assets, property ownership or debt between the parties, co-mingling of financial resources (e.g., bank records or credit cards), or any joint tax returns or other documents (e.g., health forms, insurance forms, etc., where the other party is listed as a spouse), receipts for other gifts purchased for one another, mail jointly addressed to the couple, joint membership in organizations (like health clubs, etc.), emergency contact listings, evidence of travel together and evidence of insurance coverage (showing each one of the couple as the other's beneficiaries).

While each piece of the foregoing evidence is not required, with the exception of the marriage certificate, the couple should submit as much as they can.

If the foreign spouse beneficiary is in the United States, an application for adjustment of status (Form **I-485**) can be filed in conjunction with the Form **I-130** (which is recommended), or at any time thereafter. An application for work authorization (Form **I-765**) and for travel authorization (Form **I-131**) can be filed along with the adjustment of status application as well. A non-frivolous filing for adjustment of status allows the foreign spouse beneficiary to stay in the United States while the adjustment of status application is pending. (Of course, if the **I-130** is denied, the **I-485** will be denied as well).

In terms of work authorization based on an adjustment of status application, an employment authorization document will be issued (about 90 to 120 days after the filing)

...it is recommended that an expiring advance parole document be renewed months in advance due to processing delays.

to reflect the foreign spouse is authorized to work in the United States. It generally will have a one-year term of validity, but it can be renewed. The beneficiary spouse should file for a renewal of work authorization months in advance of the expiration due to processing delays so a gap period can be avoided (but cannot do so before 120 days prior to the expiration of the prior work authorization).

In terms of travel authorization, an advance parole document will be issued (about 90 to 120 days after filing), which allows the foreign spouse beneficiary to travel to and from the United States to resume the pending application for adjustment of status. Likewise, the advance parole document will have an expiration date and may need to be renewed. Again, it is recommended that an expiring advance parole document be renewed months in advance due to processing delays. Most adjustment of status applicants should not leave the United States while the application is pending without first obtaining travel authorization (called advanced parole), as they risk being considered to have abandoned their application. However, those adjustment of status applicants who have been unlawfully present in the United States for 180 days or more should not even seek travel authorization (or travel if such authorization is received) as such an overstay, coupled with an exit from the United States, may trigger a three, or possibly ten, year bar to returning to the United States, depending on the length of the overstay. If an adjustment of status applicant has a prior status violation, especially an overstay, consultation with an immigration attorney is highly recommended.

Alternatively, if the foreign spouse beneficiary is outside the United States at the time of the **I-130** filing, once the **I-130** is approved, the application will be routed through the National Visa Center (NVC), which will request further documentation to facilitate final processing of the case at a consulate abroad (discussed above in the section on consular processing). While there is delay associated with the **I-130** processing, and in scheduling of an interview at the consulate abroad, the advantage of being married to a U.S. citizen lies in the fact that there is no delay because of priority dates and the immigrant preference classification system discussed earlier.

Once in the United States in LPR status, the foreign spouse beneficiary will have unrestricted work authorization, as well as the ability to travel to and from the United States basically at her or his leisure (subject to the abandonment of status issue discussed later.) For all intents and purposes, a LPR is accorded the same rights as U.S. citizens (with some exceptions, such as not having the right to vote).

Based on Marriage to Lawful Permanent Resident

A LPR already in the United States can marry a foreign spouse and then petition to bring that foreign spouse to, or keep the foreign spouse in, the United States (as the case may be) in LPR status based on the marriage. In such a scenario, the foreign spouse beneficiary would be classified under the 2A family preference category discussed earlier.

To accomplish this, the LPR in the United States must file a Form **I-130** (the evidence required to show a bona fide marriage is the same as in the prior discussion) and wait for the foreign beneficiary spouse's priority date to become current before filing for adjustment of status (if the foreign beneficiary spouse is in the United States in a lawful status), or applying for the immigrant visa at a consulate abroad (if the foreign beneficiary spouse is outside the United States).

It is important to keep in mind that the **I-130** filing, or even approval of the **I-130**, does not confer any immigration status on the beneficiary that would allow her or him to enter or remain in the United States to live or to work. It simply provides the basis to submit an application for lawful permanent resident status (through adjustment of status if the foreign spouse is in the United States, or consular processing, if not). Thus, if the foreign spouse is in the United States and there is a delay in the ability to file for adjustment of status because of the backlog occasioned by priority dates and the immigrant preference category system, the foreign beneficiary spouse must possess some other valid non-immigration status (e.g., **H-1B**, **L-I**, etc.) that would allow her or him to lawfully remain in the country to cover that gap. Otherwise, the foreign beneficiary spouse will need to depart the United States and consular process when her or his priority date finally becomes current.

AFFIDAVITS OF SUPPORT FOR SPOUSES

Overview

Historically, the U.S. government has been concerned that foreigners entering the United States may become a "public charge" dependent on governmental financial assistance after entering the country. Thus, for many applicants seeking entry into the United States, the government requires proof that the foreigner will be adequately financially supported once, and while in, the country. To some, it comes as a surprise that there is an income threshold that has to be met before the U.S. government allows a foreign spouse to immigrate to the United States.

Since 1996, the government has required an **Affidavit of Support**, Form **I-864**, to be filed as part of family-based immigration cases. Among other things, the form creates legal obligations on behalf of the person (not the foreigner) who signs the Affidavit of Support (called the "sponsor") to:

- provide support to maintain the sponsored alien at an annual income that is not less than 125 percent of the federal poverty income level;
- reimburse any federal or state agency that provides a "means-tested benefit" (described below) to the sponsored alien;
- agree to submit to the jurisdiction of any federal or state court for enforcement of the Affidavit of Support; and
- inform USCIS of any change of address.

These obligations and other issues related to the Affidavit of Support are explored below. In terms of timing, if the intending immigrant is in the United States, the Affidavit of Support is filed when the intending immigrant files for adjustment of status (Form **I-485**). There is no separate filing fee for submitting the Affidavit of Support as part of the adjustment of status filing.

When the foreigner is outside the United States, the **I-130** approval gets routed through the National Visa Center ("NVC"), which will instruct the sponsor when and where to file the Affidavit of Support. The NVC reviews the **I-864** only for completion, not to make the public charge determination (which is made by the consulate), and forwards the **I-864** to the applicable consulate where the foreigner will be interviewed. In this case, the sponsor must pay an Affidavit of Support processing fee (presently $120) for each **I-864** that is being submitted.

Who Must File an Affidavit of Support?

In general, all petitioners seeking an immigrant visa/status based on marriage to a U.S. citizen or LPR must submit an Affidavit of Support. (The different Affidavit of Support requirements for K-1/K-3 visas are discussed in a separate section immediately following.) This is true even if another joint sponsor, discussed below, is required to submit an Affidavit of Support as well, to meet the poverty guidelines. There are only a few certain exceptions to this general rule.

- The Affidavit of Support requirement does not apply to widows and widowers applying for immigrant status based on a prior marriage to a U.S. citizen.
- The requirement also does not apply to battered spouses based on a relationship to a U.S. citizen or LPR spouse who was the batterer.

In addition, foreigners who already have acquired forty "qualifying quarters" of work in the United States (generally ten years of work) need not have an Affidavit of Support filed on their behalf. "Qualifying quarters" is a term used to describe a unit counted toward Social Security benefits. Thus, foreigners who would like to demonstrate being credited with forty qualifying quarters of work (through Social Security earning statements) need only submit a Form **I-864W** and include a copy of the wage earner's Social Security earnings record.

A sponsor on the Affidavit of Support must be a U.S. citizen or lawful permanent resident, eighteen years of age, and maintain a "domicile" in the United States or one of its territories.

Who Can Be a Sponsor?

A sponsor on the Affidavit of Support must be a U.S. citizen or lawful permanent resident, eighteen years of age, and maintain a "domicile" in the United States or one of its territories. There are no exceptions to these requirements, which also apply to co-sponsors (described below). The term "domicile" has a particular legal meaning and is defined as the place where a sponsor has her or his principal residence with the intention to maintain that residence for the foreseeable future. Despite this definition, if someone is temporarily living abroad, he or she may still qualify to submit an Affidavit of Support. If such an issue exists, a consultation with qualified immigration counsel is recommended.

Importantly, the sponsor also must show sufficient financial ability to convince the government that the foreigner would be adequately supported while in the United States.

Minimum Income Requirements

The necessary level of income is pegged to the annual poverty level determined yearly by the U.S. Department of Health and Human Services. Sponsors must demonstrate an ability to maintain the intending immigrant and the rest of the sponsor's household at a minimum of 125 percent of the poverty level, except for sponsors who are on active military duty, in which case the financial showing is simply the poverty level.

The federal poverty level is updated yearly (usually in January or February) by the U.S. Department of Health and Human Services.

As shown, the amount of income necessary is dependent on where the sponsor resides. A higher income showing is required as the size of a household increases. For example, if the sponsor's household includes not only the foreigner but also others related to the sponsor by birth, marriage, or adoption, the sponsor's income must be higher to meet the government's requirements.

To determine the household size, the following individuals are included (regardless of their residence):

- sponsor;
- intending immigrant spouse (and all accompanying, derivative family members);
- sponsor's unmarried children under twenty-one, unless emancipated;
- persons whom the sponsor claimed as dependents on the most recent federal tax return;
- any other foreigners who have obtained LPR status based on the sponsor filing a Form **I-864**, if the prior Affidavit of Support contractual obligation has not yet terminated; and
- any other relatives (i.e., parents, siblings, adult children) residing with the sponsor if the sponsor wants her or his income to be counted for purposes of meeting the income requirement.

Minimum income needed to support the intending immigrant:

125% OF

POVERTY LEVEL

See page 14 for guidelines

In meeting the financial requirement, sponsors can rely on varied financial sources. If the sponsor's income alone is not sufficient to meet the financial requirements (which is typical with students, retirees, or the unemployed), the intending immigrant will be ineligible for the spousal visa or LPR status, unless the requirement can be met from one or more of the following:

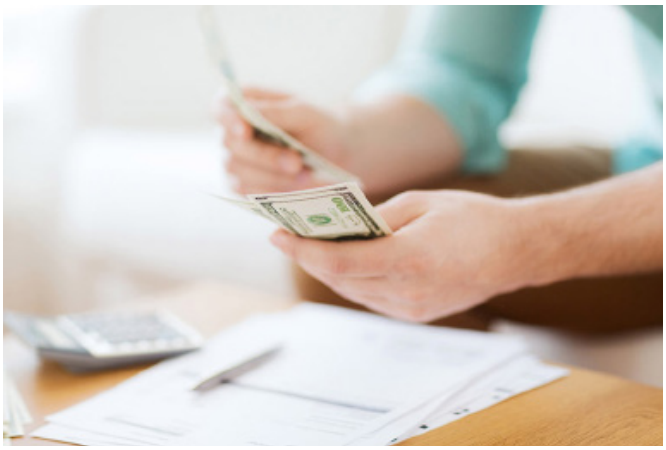
- income from any relatives or dependents living in the household or dependents listed on the most recent federal tax return who also sign a Form **I-864A**; income from the intending immigrant [but only if the intending immigrant is currently living with the sponsor and if the intending immigrant's income, which must be lawfully earned (i.e., not from unauthorized employment) will come from the same source after immigration. Practically speaking, this means that those foreign spouses residing abroad will not be able to use their income to meet the income threshold, as their foreign employment most likely will not continue. Also, if the intending immigrant is the sole income producer, but that income is through unauthorized employment, it cannot be considered, and other support alternatives need to be considered];

- the assets of any household member who signs a Form **I-864A**, or the assets of the intending immigrant; and

- a joint sponsor whose income/assets is equal to at least 125 percent of the Poverty Guidelines.

In terms of counting income, what counts is current income (i.e., the expected income for the current year). Importantly, however, the sponsor does not have to be employed. Income can come from most lawful sources. Some examples include retirement funds, alimony or child support. Income from "means-tested benefits" cannot be counted.

In terms of tax returns, the current Form **I-864** requires the submission of the federal tax return for the most recent tax year (and submitting additional tax returns, if doing so would assist in demonstrating sufficient



financial ability, is voluntary). Tax returns from past years serve merely as evidence of the ability to maintain a certain income level. Nevertheless, Form **I-864** asks for income figures from the last three years (even if tax returns from all three tax years are not submitted). If significant variations in income from year to year exist at a level close to the required amount, the USCIS's suspicions will increase. If the sponsor was, for some reason, exempt from tax filing, he or she must submit a written explanation.

In terms of counting assets, if the sponsor is a U.S. citizen, the value of the assets used must be at least three times the shortfall between the sponsor's income and the required amount. For assets to qualify for consideration, they must be readily convertible into cash (i.e., within one year) without undue hardship to the sponsor or his or her family.

In the event the primary sponsor does not earn enough or have sufficient assets, the income and assets of a joint sponsor may also be considered. The joint sponsor does not need to be related to the intending immigrant. Using a joint sponsor, however, does not obviate the need for a sponsor to submit the Affidavit of Support. The joint sponsor has to submit a separate Form **I-864**, and satisfy the income requirements independently (i.e., it cannot be combined with the income of the petitioning sponsor), although the income from a joint sponsor's household member can be considered.

2017 HHS Poverty Guidelines for Affidavit of Support

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-864P
Supplement

2017 HHS Poverty Guidelines*

Minimum Income Requirements for Use in Completing Form I-864

For the 48 Contiguous States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands:

Sponsor's Household Size	100% of HHS Poverty Guidelines*	125% of HHS Poverty Guidelines*
	For sponsors on active duty in the U.S. Armed Forces who are petitioning for their spouse or child	*For all other sponsors*
2	$16,240	$20,300
3	$20,420	$25,525
4	$24,600	$30,750
5	$28,780	$35,975
6	$32,960	$41,200
7	$37,140	$46,425
8	$41,320	$51,650
	Add $4,180 for each additional person.	Add $5,225 for each additional person.

What Legal Obligations Arise from Being a Sponsor?

The directions to the Form **I-864** specify that the Affidavit of Support is a "contract between a Sponsor and the U.S. government." The law also provides that, by signing the Affidavit of Support, legal obligations arise that are enforceable by the sponsored foreigner, or the federal, state, or other entity that provides a means-tested benefit to the foreigner. In theory, the foreigner could sue the sponsor in court to enforce the Affidavit of Support. In other words, the sponsored foreigner could petition a court to legally compel the sponsor to provide for the foreigner at an annual income that is not less than 125 percent of the federal poverty level. If joint sponsors sign the Affidavit of Support, they share this obligation.

In addition, should the foreigner ever receive a "means-tested benefit," the governmental or other entity that provided the benefit could pursue the sponsor for reimbursement. To date, federal agencies administering benefit programs have determined that federal means-tested public benefits include food stamps, Medicaid, Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), and the State Child Health Insurance Program (SCHIP). Each state determines which, if any, of its public benefits are means tested. Certain federal and state programs are not included as means-tested benefits; those are listed on Form **I-864R**.

Importantly, divorce does not terminate the Affidavit of Support obligation.

The obligation to sufficiently support the foreigner lasts until (a) the immigrant becomes a U.S. citizen, (b) the sponsored immigrant can be credited with forty quarters of qualifying work (generally equated to ten years of work), as described by U.S. Social Security law, (c) the sponsored immigrant leaves the U.S. permanently, (d) the sponsor dies, or (e) the sponsored immigrant spouse dies. Importantly, divorce does not terminate the Affidavit of Support obligation.

In addition to the foregoing obligations, all sponsors and co-sponsors must keep the USCIS abreast of any address changes within thirty days of changing their address. This is a continuing obligation, and fines can be imposed for failing to do so. Only persons who execute the Form **I-864** are required to notify the USCIS about the change of address. The form for sponsors to notify the USCIS about a change of address is Form **I-865**.

What is Form I-864EZ?

The primary Affidavit of Support Form is Form **I-864**. A shorter Form **I-864EZ** may be used instead when the sponsor is petitioning for only one family member (i.e., the spouse), is employed (but not self-employed), and will satisfy the financial requirements through the sponsor's income only (not assets, and not using income from any other person).

What is Form I-864A?

The **I-864A** is the contract between the sponsor and any household member who is promising to make her or his income and/or assets available to the sponsor to help support the sponsored immigrant. The combined signing of this form constitutes an agreement that the household member is responsible, along with the sponsor, for the support of the intending immigrant. A separate **I-864A** must be used for each household member whose income and/or assets are being used by the sponsor to qualify. The form must be submitted along with Form **I-864**. Qualifying household members include any relative who has the same principal residence as the sponsor and who is related to the sponsor as a spouse, adult child, parent, or sibling. It also includes a relative or other person whom the sponsor has lawfully claimed as a dependent on the sponsor's most recent federal income tax return, even if that person does not live at the same residence as the sponsor.

Affidavits of Support for K-1/K-3 Visas

The K-1 or K-3 beneficiary also must demonstrate to the consular officer that he or she will not become a public charge while in the United States in that non immigrant status. But the more detailed **I-864** is not required, at least to procure the K-1/K-3 visa. Instead, Form **I-134**, Affidavit of Support, will likely be required, which is a much simpler form. Indeed, it is a one-page document, front and back, and income information, bank statements, a job letter, and a tax return typically are required. Sometimes (but not always) joint sponsors are allowed with respect to **I-134**s.

Fiance(e)s entering on a K-1, fiance(e) visa, who then marry a U.S. citizen within ninety days, and K-3 applicants once in the United States, are allowed to file for adjustment of status as explained above. Despite a prior submission of a Form **I-134**, Affidavit of Support, in connection with their non immigrant petitions, they will be required to submit the **I-864**, Affidavit of Support, when they apply for adjustment of status.

FILING BASICS AND PROCEDURES

While the forms and evidence required for the spousal immigration process differ based on the particular type of immigration status pursued, there are constant themes. First, proof of the petitioner's U.S. citizenship or LPR status, as the case may be, must be submitted. Second, proof of the claimed spousal relationship has to be filed. Further, the correct filing fees have to be submitted. These themes, and some other common filing issues and tips, are explored in this section.

At the end of this section, a listing of the necessary forms to perfect the particular spousal immigration petitions discussed herein is provided. As a reminder, all necessary immigration forms, along with the applicable instructions, can be found at www.uscis.gov.

Key Terminology for Spousal Immigration Forms

Many of the necessary forms required for the spousal immigration process refer to petitioners, beneficiaries, and derivative beneficiaries.

The petitioner is the individual who is either a U.S. citizen or LPR who is filing for the immigration benefits on behalf of his or her actual or intending foreign spouse.

The beneficiary is the foreigner seeking LPR or K-1/K-3 status, as the case may be, and who has the required, actual, or intending spousal relationship to a U.S. citizen or LPR.

A derivative beneficiary would include the children of the principal beneficiary. They qualify for the same immigration status of the principal beneficiary if accompanying or following to join the principal beneficiary.

Demonstrating the U.S. Citizenship or LPR Status of the Petitioner

To establish U.S. citizenship, a petitioner may submit an unexpired U.S. passport, a naturalization or citizenship certificate, or a birth certificate from one of the fifty states, Guam, or Puerto Rico.

To establish the LPR status of a petitioner, copies of the Form **I-551**, alien registration card, should be submitted (but always keep the original). Remember to submit copies of both sides of the card and enlarge the copies so they are easy to read. If the card has not yet been received, the petitioner should submit copies of her or his passport biographic page and the page showing admission as a permanent resident, or other evidence of permanent resident status issued by the USCIS.

If none of the foregoing evidence can be submitted, there may be alternatives, and consultation with a qualified immigration practitioner is recommended.

Proof of the Qualifying Spousal Relationship

Whether the relationship involves mere engagement or a consummated marriage, the onus is on the couple to submit evidence demonstrating a bona fide, qualifying relationship.

If the couple is married, the marriage has to be both legally valid and not entered into solely for immigration purposes. Supporting evidence should include the

marriage certificate issued by a civil government and proof of termination of all prior marriages. If either of these official documents is issued in a language other than English, it must be translated by a qualified translator, in accordance with USCIS requirements, before it is submitted. Further, any divorce must be final and valid. Further, evidence should be submitted to show the marriage was bona fide, and the recommended evidence to do so is discussed in the above sections outlining the various methods of spousal immigration.

Red flags that may indicate a sham marriage include: couples who did not know each other for a long time; couples not living together; large age differences between spouses; marriages entered into right before the foreign spouse beneficiary's immigration status expires or after one of the parties is placed in removal proceedings or is being investigated by the USCIS; marriages between people who lack a common language; family and/or friends being unaware of the marriage; discrepancies in answering questions of which a husband and wife should have common knowledge; a short courtship; or a U.S. citizen petitioner who has had multiple foreign spouses for whom immigration benefits were sought.

What's in a Name?

When completing the necessary forms for the spousal immigration process, both the petitioner and beneficiary are called on to identify their names in numerous locations on the forms. What is seemingly a simple question, however, can cause unintended complications. Of course, intentionally using a false name is fraud, and there are harsh penalties for immigration fraud.

Nevertheless, difficulties arise with names even when there is no fraudulent intent. Often names have changed and, thus, differ from the names used on documents submitted in support of the necessary filings, like birth certificates or passports. This most often arises because one of the parties experienced a name change, but some of the official documents needed still reflect the former name. Other times, cultural differences with respect to names cause confusion.

...petitioners and beneficiaries should use their full legal names, including any middle names.

In the end, petitioners and beneficiaries should use their full legal names, including any middle names. When different names are used on different documents it may cause confusion for immigration officials, thus resulting in suspicion and delay. To the extent possible, petitioners and beneficiaries should make every effort to establish consistency on any official documents submitted as part of the spousal immigration process (and to ensure that such documents match the names used on the immigration forms). If there is an error on one of those documents, it is best if that mistake is corrected before any immigration filing. Should timing concerns prevent an effort to make such a correction, provide an explanation of the error along with evidence confirming the correct name. Indeed, with respect to any name discrepancy, it is recommended that such discrepancies be clarified as part of any filing before a problem arises.

Filing Tips

As stated, all necessary USCIS forms are available at **www.uscis.gov**. along with the directions for each form. It is important that this website be consulted prior to any filing as the USCIS regularly updates its forms, and care must be taken to use the most current, acceptable form. Hence, be wary of downloading forms from anywhere else but from the official U.S. governmental website.

Prior to filing, one should proceed through a checklist to ensure proper completion of the forms. The checklist should include, at a minimum, the following questions:

- Are all of the required forms for the filing being used? (Most filings require the submission of more than one form.)
- Is the correct version of each form being used?
- Do you have the correct filing fees for any form requiring a filing fee?
- Is the check for any filing fee properly made out?
- Are separate checks required or is one check sufficient if multiple filing fees are required?
- Have all form questions been answered?
- Have all necessary signatures been provided in original and in blue ink?
- Are all enclosures clearly copied?
- Is all required supporting evidence included?
- Are all documents in a foreign language translated into English in accordance with USCIS requirements for translations? (All foreign language documents need to be accompanied by a certified English translation.)
- Are all necessary photos included?
- Do the photos comply with the relevant USCIS specifications and have names and alien numbers (if any) written on the back?
- Is the entire packet properly assembled? (Review the "General Tips on Assembling Applications for Mailing" at **www.uscis.gov**.)
- Are the forms being sent to the correct location? (The USCIS often changes the required locations for filings.)
- Do you have documentation to track the mailing?
- Have you made a copy of any submission for your records? (This is always recommended.)

SPOUSAL IMMIGRATION INTERVIEWS

All interviews, whether conducted at a local USCIS office in the United States (for adjustment of status applicants) or at a consulate overseas, are different. Nevertheless, below are some tips to prepare for this often stressful stage of the spousal immigration process.

At the outset, it is important for the beneficiary (or petitioner if also at the interview, although this is rare with consular processing), to review the documents filed as part of the spousal immigration process. He or she needs to become familiar with the responses and confirm that the information is still correct. If not, the beneficiary should bring updated documentation regarding any change (such as changes in names, address, employment, children, and so on). If there are situations that are atypical for a marriage (for example, the couple lives apart, are legally separated, sleep in different beds, etc.), solid explanations need to be developed and rehearsed in advance. When suspicion is raised, the couple can be interviewed separately, and their answers compared to verify consistency.

During the interview, the beneficiary (or couple, as the case may be) can also expect to be questioned on the following subjects:

- Questions about the couple's relationship to test the bona fide nature of the marriage. This could include questions about the history of their relationship (how, where, when did it start), particulars about their wedding (where did it take place, how many guests, who were in the wedding party, was there a reception, was there a honeymoon), whether the relationship is consummated, particulars about each other's daily habits and the dynamics of the relationship (like sleeping arrangements, showering, typical breakfast, favorite foods, TV shows, etc.), questions about recent gifts to one another or how birthdays or holidays are celebrated, questions about the joint residence (how many rooms, how many phones, how many bathrooms, how many TVs, etc.) In general, questions may be asked about subjects of which a husband and wife should have common knowledge.

- Questions about possible grounds of inadmissibility, including criminal grounds, health problems, past immigration violations, or public charge concerns.

- Questions about the immigration forms (to make sure the responses are consistent with what is represented on the forms, and that there have been no material changes). For example, questions could include verifying a spouse's birth date, heritage, family, or employment, as represented on the forms.

If a couple is asked to return for a second interview, there is a significant probability that the government suspects fraud. If so, the interview may be videotaped, and, most likely, the couple will be questioned separately. In such circumstances, advance preparation and consultation with an experienced immigration attorney is highly recommended.

In the end, couples in a bona fide marriage (with no worries about inadmissibility grounds) should have nothing to fear about interviews. Such couples should act naturally. There is no requirement that every question be answered correctly, and a couple should be allowed to explain any discrepancies if questioned separately. Nevertheless, some preparation should be conducted to ease the nervousness that often seems to accompany any scheduled interview, to ensure the interview proceeds smoothly, and to avoid unfounded suspicions.

CONDITIONAL RESIDENT STATUS

Under the U.S. immigration laws, there is a legal presumption that a marriage is fraudulent if LPR status is granted before the couple's second anniversary and, within two years of the grant of LPR status, the marriage terminates.

To guard against that possibility, if at the time of admission to the United States or at the time of the adjustment of status interview, the marriage is less than two years old, the LPR status conferred on the foreign spouse is conditional and valid only for an initial two-year period. As such, the actual green card (Form **I-551**) will be initially valid for two years pegged from the date LPR status was granted.

Form **I-751** must be filed within the ninety-day period preceding the expiration date of the conditional residency status.

Thereafter, in order to get permanent LPR status, the petitioner and beneficiary must submit a joint petition to remove the conditional residency (on Form **I-751**), not before but at least within ninety days prior to the two-year anniversary of the granting of LPR status. In other words, Form **I-751** must be filed within the ninety-day period preceding the expiration date of the conditional residency status. This is thus an important date to remember.

As part of the Form **I-751** filing ($680 filing fee), the couple needs to submit documents such as tax returns, children's birth certificates (if any), and other evidence demonstrating a continuing, bona fide marriage (which includes many of the documents described above). Thus, it is recommended that the couple start saving documents evidencing a bona fide marriage leading up to this process.

While failure to live together and/or be married at the point of filing the Form **I-751** is not fatal to the removal of conditional residency, it makes it more difficult. The Form **I-751** is intended to be a joint filing. If the parties are no longer married or if the petitioner spouse

refuses to sign Form **I-751**, there are limited options allowing the foreign spouse to still successfully petition for the removal of conditional residence and achieve permanent LPR status. These include:

- the petitioning spouse is deceased;
- the marriage was entered into in good faith, but the marriage was terminated through divorce (mere separation is not enough and the divorce proceeding has to be complete, which is often difficult given the length of time required for a divorce proceeding) or a completed annulment;
- the foreign beneficiary spouse was battered or subject to extreme mental cruelty;

or

- the termination of conditional residency and removal from the United States would result in extreme hardship to the foreign beneficiary spouse, a dependent child, or even a subsequent spouse.

If a foreign beneficiary spouse needs to rely on any of these options, it is recommended that one seek the assistance of qualified immigration counsel.

Once the **I-751** is filed, a receipt is issued showing that conditional LPR status is extended for a period of one year for employment and travel. If the USCIS has not adjudicated the **I-751** filing within that year, an appointment can be made at the local USCIS office to request an **I-551** stamp, which would facilitate a longer period of status allowing employment and travel until the **I-751** is adjudicated.

Despite its name, LPR status is not permanent in all circumstances and (to the surprise of many) can be lost through affirmative misconduct or abandonment. There are other requirements associated with LPR status that should be remembered.

Crimes

Unlike U.S. citizenship, LPR status may be lost by commission of certain crimes. The types of crimes resulting in such a harsh sanction are beyond the scope of this work, but even such crimes as shoplifting, assault, or drunk-driving, could put LPR status at risk. Any LPR who has been arrested for any reason should consult with a qualified immigration attorney immediately, especially before agreeing to plead guilty to any crime. Criminal defense attorneys often are unaware of the affect such convictions can have on LPR status. The safest approach, of course, is to avoid anything that may be construed as criminal activity.

... it is generally recommended not to leave the United States for more than six months, unless necessary.

Abandonment

A LPR can travel to and from the United States as many times as he or she chooses as long as such travel outside of the United States does not constitute an abandonment of LPR status. To avoid an abandonment finding, it is necessary to continue to permanently reside in the United States. With trips of extended duration, this can become an issue. While the Form **I-551**, or green card, is the document to re-enter the United States for trips of less than one year, admission is not guaranteed, and will be denied if the border agent finds that LPR status has been abandoned. In considering whether an individual has abandoned LPR status, the border agent will consider the ongoing ties to the United States and the reasons for the absence (and prior absences) from the country. In the end, the immigrant's intent will be essential. If abandonment is found, the green card will be taken, and the individual may be turned away at the border. Thus, it is generally recommended not to leave the United States for more than six months, unless necessary. Before embarking on such a trip, one should consult with qualified immigration counsel.

For individuals needing to leave the country for up to two years, they should petition for a re-entry permit. This is a good solution for those who want to work or study abroad for an extended period, or who have other reasons necessitating a lengthy stay abroad. However, even a re-entry permit does not completely immunize the immigrant from an abandonment finding.

In the end, a LPR traveling abroad for an extended period of time always must be prepared to document their intent to remain in the Unites States. Such documents include tax returns, letters from employers, property ownership, bank accounts, and other documentation of significant and continued ties to the United States.

Changes of Address

LPRs must continue to advise the USCIS of any address changes within ten days, by using Form **AR-11**. Failure to do so is technically a removable offense, but that is rarely, if ever, enforced in this practitioner's experience. In any event, compliance is recommended, and it is recommended that such notifications be sent by some verifiable method of delivery, (e.g., online, certified mail, or third-party carrier).

RIGHTS AND RESPONSIBILITIES OF A GREEN CARD HOLDER (PERMANENT RESIDENT)

Your Rights as a Permanent Resident

As a permanent resident (green card holder), you have the right to:

- Live permanently in the United States provided you do not commit any actions that would make you removable under immigration law;
- Work in the United States at any legal work of your qualification and choosing; (Please note that some jobs will be limited to U.S. citizens for security reasons.)
- Be protected by all laws of the United States, your state of residence and local jurisdictions.

Your Responsibilities as a Permanent Resident

As a permanent resident, you are:

- Required to obey all laws of the United States the states, and localities;
- Required to file your income tax returns and report your income to the U.S. Internal Revenue Service and state taxing authorities; (See this IRS link: https://www.irs.gov/uac/do-i-have-to-file-a-tax-return.)
- Expected to support the democratic form of government and not to change the government through illegal means;
- Required, if you are a male age 18 through 25, to register with the Selective Service.

Thomas J. Geygan, Jr.
Geygan & Geygan, Ltd.
8050 Hosbrook Rd, Ste. 107
Cincinnati, Ohio 45236
Tel: 513-791-1673

VISAS & GREEN CARD
FOR YOUR
FIANCÉE OR SPOUSE

This book was written for anyone looking to bring their future spouse to the United States, or who is coming to the United States by marriage. This book is for those about to go through the immigration process to come to or stay in the United States. If you have questions or concerns about the immigration process, then this book is for you.

Thomas Geygan

I have been an immigration attorney since 1998 and this picture is the reason why. This is a picture of my wife Griselda on our wedding day in Honduras.

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