

E.O. 12958: N/A

TAGS: CVIS, KSEP

SUBJECT: K3 Visa Implementation

REF: A) STATE 057338 B) FEDERAL REGISTER VOL. 66, NO. 174, SEPTEMBER 7, 2001

1. This has been cleared by M/SEP.

2. Summary: BCIS published a rule in the Federal Register to implement the new K3 NIV. To obtain K3 status for an alien spouse, a U.S. citizen petitioner must first file an I-129F petition with BCIS in the United States. Confirmation of BCIS approval of the I-129F petition is required before a K3 may be issued and will be relayed to overseas posts by NVC. K3 processing overseas will closely mirror that of K1 fiance processing. If the marriage occurred abroad, a K3 must be issued in the country where the marriage took place. Action requested in Paragraph 10.

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The BCIS Rule - K3 Requirements  
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3. Published on August 14, 2001 in the Federal Register, the BCIS rule outlines requirements for obtaining K3 nonimmigrant classification and maintaining status in the United States:

A. The alien must be married to a U.S. citizen who has filed an I-130 petition for an immigrant visa (IR1) on behalf of the alien.

B. The U.S. citizen petitioner must also file a second petition, the I-129F, with BCIS for a non-immigrant visa (K3) on behalf of the alien spouse. The I-129F must be filed in the United States. This second petition must be approved by BCIS before the alien can begin K3 visa processing overseas. The K3 visa must be issued in the country where the marriage took place, if the marriage occurred outside of the United States.

C. The alien must be seeking to enter the United States to await "the availability of an immigrant visa." While visa numbers are of course not limited for spouses of U.S. citizens, the BCIS rule requires an alien who enters the U.S. as a K3 to continue to pursue the immigration process by having an I-130 petition or an adjustment of status pending approval by BCIS. To ensure that K3s are actively pursuing immigration, BCIS will grant only a two-year admission period when the K3 enters the United States. Similarly, work authorization will be granted in two-year increments.

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Requirements for K4 Classification  
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4. To qualify for K4 issuance, an applicant must be the minor, unmarried child under 21 years of age of a qualified K3 applicant. The BCIS rule notes that the U.S. citizen who files an I-129F petition for an alien spouse does not have to file a separate I-129F petition for a child of that spouse. These children are to be listed on the I-129F petition for the spouse.

5. While the U.S. citizen must also file an I-130 petition for the alien spouse, there is no requirement "to file a Form I-130 immigrant visa petition on behalf of the aliens children seeking K4 nonimmigrant status, since K4 is merely a derivative nonimmigrant classification," according to the BCIS rule. K4s are dependent on K3s for their status.

6. However, as the BCIS rule explains, the K4 child will not be able to file for adjustment of status in the United States until the U.S. citizen parent/step-parent files a I-130 on behalf of the child. If the U.S. citizen parent/step-parent never files the I-130 petition, the immigrating parent may do so once he/she has obtained LPR status, but the child would have to wait for an available visa number. Finally, according to the BCIS rule, as the immigrating parent, upon adjusting status, "would no longer be in K-3 status, the child would no longer be in lawful K-4 status, since this is merely a derivative classification", and that child would begin to accrue unlawful presence. As the K3/K4 may not change status in the United States to another NIV category (see below), the continued lack of an I-130 petition will eventually create adjustment of status problems for the K4. K4s who do not meet the definition of stepchild in INA 101(b)(1)(B) because the stepchild relationship was not established before the stepchilds 18th birthday will face the same problem K2 derivative children of fiances have long encountered, i.e., the U.S. citizen spouse will be unable to file the I-130 petition on their behalf. In these cases, the K3 will have to file the petition when he/she obtains LPR status.

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The K3 Application Process Begins with BCIS in the U.S.  
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7. U.S. citizen petitioners must file an I-129F petition with BCIS to initiate overseas processing of a K3. The I-129F is the same petition that is used to file for fiance visas. Petitioners should be directed to BCIS for further information on filing an I-129F for K3 status. BCIS has a Website at: [HTTP://BCIS.USDOJ.GOV](http://BCIS.USDOJ.GOV).

8. As is the case for fiance visa petitions, the I-129F must be approved by BCIS in the United States. Neither consular officers nor BCIS offices overseas are delegated the authority to approve these petitions.

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BCIS Forwards Approved I-129F Petitions for K3s to NVC  
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9. BCIS has a new Service Center designed to handle the LIFE Act visas, both V and K3. The new Missouri Service Center (MSC) will adjudicate all I-129F petitions for K3 visas. BCIS will note the country of marriage in the "Remarks" section of the I-129F. Once a petition is approved, MSC

will forward the paper case file to NVC as well as the usual electronic data file.

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NVC Forwards 129F Petitions Approvals to Posts  
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10. NVC will electronically enter the case into IVIS, manually enter the country of marriage, and do the NCIC check. When the case clears the NCIC check, NVC will rubberstamp the lower left of the I-129F petition with the notation "NCIC Cleared." NVC will then scan both sides of the I-129F petition and e-mail the case to the post in the country of marriage noted on the petition. If a case instead results in an NCIC "hit," NVC will mark "NCIC Hit" in the lower left corner of the petition and will e-mail to post a copy of the "hit sheet" with the scanned petition. Posts must then follow the usual fingerprinting procedures.

11. ACTION REQUESTED: As soon as possible, all K3 issuing posts must send an e-mail message to Sandra Shipshock at NVC listing the e-mail address(es) at post to which K3 petitions may be sent from NVC. Posts should create a separate K3 e-mail inbox for receipt of these petitions, or if this is not possible, list several consular staff members as recipients.

12. For IV-issuing posts, NVC will also e-mail K3 files for loading into posts IV application. Non-IV-issuing posts will have only the NIV system in which to manually enter data for actual visa issuance and will likely need to maintain paper files for 221g refusals.

13. NVC will not send K3 applicants a letter explaining K3 eligibility as is currently done for V applicants.

14. NVC will retain the I-129F for two years before shredding it.

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Place of Application  
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15. Most K3/K4 visas will be issued by the IV-processing post in the country. However, as K3/K4 visas must be issued in the country where the marriage to the U.S. citizen took place, some non-IV-issuing posts in regions where IVs are centralized in a post outside the country must be prepared to process these new NIVs.

16. For those wed in countries where there is no U.S. visa-issuing post, K3/K4 applicants will be instructed to apply at the consular post designated to handle "homeless" IV cases for nationals of that country.

17. Alien spouses wed to a U.S. citizen in the United States should apply in their country of residence, if they are overseas, which is also the rule regarding the place of application for K1 fiance visas. If they are already in the United States, they may apply to BCIS for an adjustment of status to LPR, see paragraph 36 below.

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Post Processing of K3 applicant  
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A. Notification/Packet 3:

18. Once post receives the scanned I-129F petition from NVC, post should send the beneficiary a letter developed by post that outlines documentary requirements for K3 and K4 issuance, instructions on where to undergo the required medical exam, and how to notify post (by mail or telephone) when they are "documentarily" prepared for an interview with a consular officer. Names of eligible K3 applicants will not be added to CLASS; proof of eligibility is the approved I-129F petition from NVC.

B. Personal Appearance:

19. K3s are NIVs, and as such, an interview with a consular officer is not necessarily required. Many posts are successfully issuing V NIVs using the "Interview by Exception" method, see Reftel A, para 41.

C. Required Documents:

20. Documents required for K3/K4 processing are similar to those needed for K1 fiance processing and will include two copies of the DS-156 application form (no supplemental form was deemed necessary for K3s as is the case for the Vs), local police and birth certificates for each K3/K4 applicant, local marriage certificate for the principal applicant and divorce/death certificates for any previous marriages, and the standard IV medical exam minus vaccinations. A K3 applicant needs a valid passport. K4 applicants must have their own passport issued in their name or be included in the K4 parents passport.

D. Medical Exam:

21. K3/K4 applicants must undergo the standard IV medical exam performed by posts panel physician using the standard IV medical forms (DS-2053 and associated worksheets). As is the case for K1 applicants, K3/K4s are not required to submit proof of vaccinations until they adjust status with BCIS. Any post that does not have a formal signed contract with a local panel physician should contact CA/VO/F/P.

E. Public Charge:

22. K3/K4 applicants are not subject to the I-864 Affidavit of Support requirements at the time of K3 application; they will be required to submit one when they adjust status to LPR in the U.S. with BCIS. Neither do K3s require the I-134 Affidavit of Support, although the consular officer may request one when deemed appropriate. While a K3/K4 applicant is subject to Section 212(a)4, he/she must only convince the consular officer that he/she will not be a public charge in the United States. As with V processing, consular officers have the discretion to make a determination on the likihood of an applicant becoming a public charge based on whatever information is presented at the time of application.

D. Marriage Bona Fides

23. The BCIS rule states that "any finding by the Service that a fee or other consideration was given for the purpose of filing the relative visa petition or the petition to obtain K nonimmigrant status for a spouse results in termination of the K status and the alien being placed in removal proceedings." Consular officers should attempt to determine eligibility using information presented at the time of application.

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Post Issuance of K3  
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24. Like the K1 fiance visa, the K3 will be issued as an NIV, and post will prepare a packet of documents for the applicant to present to BCIS including a copy of the scanned I-129F petition received from NVC, one of the DS-156 application forms, medical exam, marriage, birth and police certificates. No financial support documents are required in the packet. Documents supporting issuance to a minor child of the K3 should be included in the K3s packet. This is unlike current procedures for V issuance where post is not required to prepare a packet of documents to accompany the V visa issuance.

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Timely Processing of K3 Applicants  
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25. The LIFE Act created the K3 and the V categories to bypass administrative processing delays that cause long separation of families. K3s are immediate relatives of U.S. citizens. Posts should keep in mind that the intent of the K3 is speedy reunification of U.S. citizen families.

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Validity of the I-129F Petition  
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26. The I-129F petition is valid for four months from the date of BCIS approval. If the petition has expired, the consular officer may revalidate the petition for an additional four months with a notation "revalidated to (date)" in the "Remarks" block on the petition over the signature and title of the consular officer. The date of revalidation should also be noted.

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Fees  
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27. Only the \$45.00 MRV fee will be charged per applicant. Like the K1 and the V visas, there are no reciprocity fees beyond the flat MRV fee.

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## Validity of K3/K4 Visas

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28. Posts will issue multiple entry/2-year validity K3/K4 visas. Visa validity for K4s who will age out must be limited to the day before the K4 applicant reaches his/her twenty-first birthday. K3/K4 visas must also be limited for those nationals for whom security concerns indicate a shorter validity period is necessary.

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## Ineligibilities

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29. Applicants are subject to all ineligibilities. Unlike the applicants for V visas, the LIFE Act does not exempt K3/K4s from INA section 212(a)(9)(B). K3/K4 applicants are subject to the 3-year bar if they accrued more than 180 days of unlawful presence in the United States, and to the 10-year bar if they accrued one year or more of unlawful presence. However, they are eligible to apply for a waiver.

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## May IR1 Petition Beneficiaries Opt for K3 Processing?

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30. According to the LIFE Act, a K3 visa may be issued when "an immigrant visa is not immediately available to the alien." To maximize the number of aliens who may benefit from the LIFE Act provisions, VO has determined that an immigrant visa is "available" only when the actual approved I-130 petition has been received by the IV-issuing consular post. If the I-130 petition is at post, or the applicant has already been interviewed and denied the IR1 by a consular officer, perhaps due to lack of the I-864 AOS, that applicant must proceed with IR1 processing and may not choose to apply instead for the K3. If the I-130 petition remains at or is in transit from NVC, or the applicant has already commenced K3 application (by returning Packet 3 forms) when the I-130 petition arrives at post, he/she may continue to process the K3 rather than switch to IR1 processing. K3 applicants may opt at any time to process as IR1s rather than continue the K3 application.

31. Department notes that place of application for some K3 applicants will cause problems in this regard. Many K3s must apply at non-IV issuing posts in regions where IV processing is centralized in a post outside the country. For example, if a K3 petition is received by the non-IV issuing consular section in Almaty, Kazakhstan, and an IR1 petition is already at the consular section in Moscow (the designated centralized IV post for the former Soviet countries), the K3 applicant in Almaty should not be told he/she must travel to Moscow in order to process the IR1 in Moscow. He/she may apply for the K3 in Almaty despite "availability" of an IV in Moscow, or he/she may abandon K3 processing and opt for IV processing in Moscow.

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## Who Is Eligible for the K3/K4?

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32. Only spouses of U.S. citizens may be issued a K3. Only minor, unmarried children of a K3 are eligible for a K4. Other relatives of U.S. citizens are not eligible for K3/K4 visas, and no relatives of legal permanent residents may obtain K3 visas. The K3 is a close substitute for an IR1 immigrant visa and was designed to speed processing and family reunification for spouses of U.S. citizens.

33. Note that a child of a U.S. citizen petitioner is not eligible for a K4 visa unless that child is also a derivative child of an eligible K3 spouse. Unlike the K3, the K4 is not a close substitute for an IR2 immigrant visa. Most K4 recipients will probably be stepchildren of U.S. citizen petitioners.

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Should a K4 be processed if the derivative child is not named on the I-129F petition?

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34. The K4 should not be denied for lack of the listing of the child's name on the I-129F petition. As in processing F2A derivative children, the K4 visa can and should be issued to a derivative child who can demonstrate that he/she is the minor, unmarried child of applicant issued a K3 visa.

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Can K3/K4 Applicants Change To Or From Another NIV Category Once They Enter the United States?

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35. According to the BCIS regulation, "K3 and K4 nonimmigrants may not change to any other nonimmigrant classification; this is comparable to the prohibition against adjustment of a K to LPR on any basis other than the marriage on which the K petition was based."

36. Furthermore, non-immigrant aliens will not be able to change from another NIV status to K1, K2, K3 or K4 status while in the United States.

37. According to the BCIS rule, the alien spouse of a U.S. citizen and a child of that spouse who are already in the United States may have the U.S. citizen file an I-130 petition on their behalf with BCIS; the alien spouse and his/her child may then file with BCIS for an adjustment of status to LPR. While either of these are pending, the alien spouse and his/her child may remain in the United States without accruing unlawful presence, and they may also obtain work authorization and permission to travel outside the U.S., and they may continue to do so without K3/K4 status or visas.

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Use of the K3/K4 NIV to Travel Outside the United States

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38. According to the BCIS rule, "aliens present in the United States in a K3/K4 nonimmigrant classification may travel outside of the United States and return using their nonimmigrant K3/K4 visa, even if they have filed for adjustment of status in the U.S. prior to departure "The Service will not presume that departure constitutes abandonment of an adjustment application that has been filed."

39. Note that this is quite different from those holding K1/K2 status who are required to obtain advance parole from BCIS to avoid abandonment of their adjustment application with BCIS, if they leave the United States.

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VO Contacts

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40. Any questions regarding legal issues of the LIFE Act should be addressed to CA/VO/L/R. Questions on processing procedures may be sent to CA/VO/F/P.

POWELL.