

## **QUESTIONS AND ANSWERS ON THE NEW V VISA AND THE NEW K VISA RULES**

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On December 21, 2000, the Legal Immigration and Family Equity Act (LIFE) became law. Among other provisions, LIFE creates a V visa that allows certain spouses and children of permanent residents to live and work here while their immigration cases are pending. LIFE also extends K visa benefits to the spouse and unmarried minor children of U.S. citizens. Prior to LIFE, K visas were available only to a U.S. citizen's fiancé and the fiancé's children.

Congress passed LIFE to bring families together. Due to processing delays and quota backlogs, husbands, wives and children of permanent residents and U.S. citizens often wait abroad months or years to get immigrant visas.

### **The New V Visa**

The V visa is available to the spouses and unmarried minor children of permanent residents. Because of quota backlogs, these individuals typically wait five to six years to get permanent residence. While many wait in their country, separated from spouses or parents, many others are in the United States without lawful status and unable to work.

#### **1. Who qualifies for the new V visa?**

The V visa is available to the spouse and unmarried children under 21 of permanent residents. The applicant must have been waiting for permanent residence three years or more from the time the INS received a second preference petition filed on his or her behalf. The INS must have received the applicant's petition on or before December 21, 2000. The INS need not have approved the petition.

#### **2. What are the benefits of the V visa?**

V visa holders can live and work in the United States while waiting to qualify for permanent residence. Prior to LIFE, these relatives of permanent residents often had difficulty getting a visa to visit the United States.

#### **3. How does one get a V visa?**

V visa applicants outside the United States will apply for their visa at a U.S. consulate abroad. The bars for applicants unlawfully present don't apply. Applicants in the United States, even those here unlawfully, qualify to change status without returning home. We won't know the exact procedures until the INS and Department of State issue instructions. Once the V visa holder has a relative petition approved on his or her behalf and a current priority date, he or she can adjust status under 245(a) or 245(i) if qualified. If the V visa holder can't qualify for adjustment under the 245(a) or 245(i) rules, he or she may qualify under the new 245(m) which requires that the applicant have been physically present any time from July 1, 2000 to October 1, 2000. This will benefit the small number of people who were here during that period, but not here on December 21, 2000.

#### **4. Is the V visa available to people who have been in undocumented status?**

Yes. V visa applicants ARE NOT inadmissible for having been unlawfully present in the United States more than 180 days.

#### **5. When can I apply for a V visa?**

The law went into effect on the day of enactment, December 21, 2001. However, INS and DOS have not yet issued instructions and/or interim regulations and are not yet accepting applications.

## **The New K Visa Rules**

Congress amended the K visa law to allow the spouse and unmarried minor children of a U.S. citizen to live and work in the United States while waiting to get residence. Unlike for V visa applicants, K visa applicants need not have filed by December 21, 2000 and need not have been waiting any particular amount of time. Prior to LIFE, the K visa was only available to the fiancé of a U.S. citizen and his or her children.

### **1. Who qualifies for the new K visa?**

The K visa is available to the spouse of U.S. citizens and their unmarried children under age 21 who are outside the United States awaiting processing of their green card petitions. The K visa is available to future and current spouses and children. To qualify the applicant need only have a U.S. citizen spouse petition on his or her behalf.

### **2. How does the K visa help the children of the spouse of a U.S. citizen?**

LIFE allows the unmarried children under 21 of the foreign spouse to accompany or follow their parent to the United States in K status. The children can work in the United States, and can adjust status to permanent residence.

The ability to adjust status is a big benefit for children 18 or older but under 21 who are not the natural children of the petitioning spouse. Under prior law, the 18-to-under-21 FIANCÉ children have been able to adjust if the fiancé married the U.S. citizen petitioner within 90 days of entry. But, a child 18-to-under-21 whose parent had already married a U.S. citizen faced a long wait to get permanent residence. Prior to LIFE, the non-citizen parent of these children had to petition for these children after the parent got permanent residence or U.S. citizenship. Due to processing and quota backlogs, the process often meant a wait for permanent residence of six years or more. Now, unmarried children 18-to-under-21 who accompany or follow a parent to the United States on a K visa can adjust status after entry in their own derivative K-3 status.

### **3. What are the benefits of the K visa?**

Hopefully the INS and U.S. consuls will process K visas more quickly than immigrant visas, speeding up the uniting of spouses and children with the U.S. citizen petitioner. K fiancé visas often, but not always, process a couple of months faster than immigrant visas. Another benefit is the ability of unmarried minor children over 18 but under 21 to accompany a parent to the United States. Under current law such children would need to wait years for approval of a visa.

### **4. Is the K visa available to people who have been in undocumented status?**

Maybe. Undocumented immigrants would have to apply at a U.S. consul abroad. If the applicant were inadmissible on any grounds, he or she would require a waiver under section INA 212(d)(3)(A) AND a finding that the applicant would be eligible for a waiver at the adjustment of status interview. The unlawful presence bars apply. For an applicant facing inadmissibility charges, the risk of applying at a consul is great.

### **5. How does one get a K visa?**

K visa processing for the spouse and children of a U.S. citizen should be similar to current K visa rules for fiancés. If the petitioner is in the United States, he or she will file here and the notice of approval will be forwarded to a U.S. consul abroad. Where the marriage has taken place abroad,

LIFE requires that the K visa applicant apply for the visa in the country where the marriage occurred.

**6. When can I apply for a K visa?**

The K visa law NOW is in effect, but neither INS nor DOS have issued any rules so are not yet accepting petitions.

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