



## **SAN BERNARDINO ATTACKS FALLOUT: WILL IT GET HARDER FOR AMERICANS TO MARRY FOREIGN SPOUSES OVERSEAS?**

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The [USCIS has promised to review the K-1 visa procedures](#) after the San Bernardino attacks since one of the attackers entered on this visa. The K-1 visa is commonly used by a fiancé of a US citizen spouse to enter the United States, and one of the conditions (with some exception) is that the parties must have met within the past two years prior to filing the application. Once the fiancé enters the United States, he or she must get married to the US citizen within 90 days, and then apply for the green card.

While it is unfortunate that a foreign terrorist used the K-1 visa, this does not mean that the K-1 visa should be restricted for all fiancés. The K-1 visa provides the only access for a fiancé to enter the US. While one can enter the United States as a visitor to get married, one cannot also enter with the intention of adjusting to permanent residence status in the United States. Curtailing the K-1 visa will also limit the ability of US citizens to seek foreign spouses. Moreover, the K-1 visa procedure already has in built rigorous screening, and this author has known of delays due to security clearance of K-1 applicants even prior to the California terrorist attacks that left 14 people dead.

As an alternative to the K-1 visa, a US citizen can marry a foreign spouse and directly petition for an immigrant visa. There is only a marginal difference in the time it takes under both the processes. From the point of view of not waiting to celebrate the marriage, it is quicker. However, in terms of processing time, it takes about the same amount of time for a K1 visa or marriage based I-130 petition to get approved, and the same amount of time for the scheduling of the interview at the US consulate. Once the K-1 visa is issued, the parties have to get married in the United States within 90 days prior to filing the green card

application (if they get married after 90 days, the I-130 petition must be filed). Thus, there is an additional extra step before the applicant can receive the green card when compared to a beneficiary of a spousal I-130 visa petition who is admitted into the United States as a permanent residence.

Even if the K-1 visa is not curtailed by Congress (and hopefully that will not be the case), there is bound to be more scrutiny after the shootings. To be eligible for the K-1 visa, it is important that there be no legally valid marriage as the applicant must remain a fiancé. Even religious marriages that are legally recognized as marriages may disqualify the applicant. The authorities will try to ferret out cases if they discover that the parties got married prior to the issuance of the K-1 visa. [In traditional cultures, a marriage is generally preferred](#), and if an applicant is not permitted to be with the prospective US citizen spouse without a marriage, one should not file the K-1 visa and directly file for a spousal immigrant visa. In fiscal year 2014, only 4 K-1 visas were issued in Saudi Arabia as compared to 7, 228 K-1 visas in the Philippines. Still, even if there is no marriage, the authorities will look more closely after the San Bernardino shootings to see whether this is a bona fide relationship, which is harder to prove when there is no marriage. There will also be more security checks and delays relating to the K-1 visa, although even in the past, delays as a result of security checks were extremely frequent.

The essential point that must be made is that terrorism is separate from immigration. While additional screenings for K-1 visa applicants will be inevitable, they must not in effect nullify the K-1 visa. By the same token, beneficiaries of marriage-based I-130 petitions should also not get excessively delayed as a result of additional scrutiny. Both the K-1 and I-130 procedures take upward of six months, and fiancés as well as spouses from countries with predominant Islamic populations have in any event been impacted since 9/11. It has also been revealed that the shooter who received the K-1 visa also [talked openly on social media about violent jihad](#). Those social media comments were not subject to the security checks that she underwent, and in the future, the authorities are more likely to pry into one's comments on social media. While comments relating to causing violence should be taken seriously in the visa application process, it is hoped that harmless comments made in the exercise of free speech in opposition to US policy or events, such as feeling disgust about Donald Trump's statements regarding banning Muslims or criticizing US drone policy, should not be used as a basis to play "gotcha" during the security

screening of a visa applicant.

US citizens must be free to marry foreign spouses of their choosing. Imagine if Trump's desire to ban Muslims from being admitted become reality. Americans will not be able to bring in fiancés or spouses who are Muslims. Note that this has de facto been the case, exemplified in the Supreme Court case of *Kerry v. Din*, where the plurality of the court upheld the limited power of courts to review adverse consular decisions. In [\*Kerry v. Din\*](#), the foreign national spouse in Afghanistan was denied an immigrant visa by citing the terrorism ground of inadmissibility, INA 212(a)(3)(B), without any further explanation.

US immigration law is already very complicated, made further convoluted with security checks since 9/11. There is no need for Congress to curtail the K-1 visa, which in turn will make it harder for Americans to marry foreign spouses abroad. It is hard for an employer to sponsor a foreign national employee for a green card as the employer must certify that it was not able to find an available and willing US worker before being able to sponsor a foreign employee for a green card. The reason for this is that there is a countervailing policy interest in protecting American jobs. It would be absurd to similarly restrict an American's ability to marry and sponsor a foreign spouse as a result of countervailing security concerns. One unfortunate misuse of the K-1 visa, which has otherwise worked very well, should not be the reason to make it harder for Americans to marry foreign spouses overseas.