



Getting married abroad? How to bring your spouse to the US:

by Tahmina Watson, Attorney, Watson Immigration Law

As an immigration attorney, a major part of my role is to reunite people - reuniting parents with their children, children with their parents, siblings with one another and reuniting spouses. In our Indian subcontinent community, arranged marriages are still prevalent, but the concept has a modern turn now with arranged marriages more often than not being an introduction (though that is a whole new discussion!).

I am frequently asked the same question: "I am engaged and I want to bring my fiancé(e) or I am married and I want to bring my wife. Please tell me the best way to bring her/him here." To answer this question, I first need to know the stage of the relationship. Often there is an engagement without a wedding, or a religious ceremony without a formal registration of the marriage or there is a marriage that is registered with the relevant authorities. In this article, I will address the three ways to bring your 'other half' to the United States.

K-1 visa:

The first option is a K-1 visa or a 'fiancé(e) visa'. If you are engaged and not yet married, this visa is for you. The K-1 visa requirements are as follows:

- a. You must be a United States citizen. Lawful Permanent Residents (LPR) or "green card" holders of the United States are not allowed to obtain fiancé(e) visas.
- b. Both you and your fiancé(e) must be free to marry. This means that if either of you has been married previously, you are either divorced, widowed or the marriage was annulled.
- c. You must have met your fiancé(e) in person within the previous two years. Typically, the US citizen goes to the home country of the fiancé(e) to meet him or her.
- d. Finally, there is a minimum income requirement for the fiancé(e) visa petitioner.

The process consists essentially of two parts. First, the initial filing is made in the United States with the United States Immigration and Citizenship Services (USCIS). Once the petition is approved in the US, the case is sent to the appropriate consulate. The consulate will then set an interview and have the final say in the approval.

Please note that if you have not met your fiancée, either, because you met online or you are having an arranged marriage, your petition will face scrutiny and perhaps even a denial.

Second, once your fiancé(e) receives the visa and enters the United States, you must marry within 90 days. Thereafter, you must file to adjust the status of your spouse, i.e., apply for legal permanent resident status. It must be noted that the K-1 visa holder is required to marry the petitioner only. Marriage to another person is not permissible. In the event the marriage to the petitioner fails to occur, the fiancée must return to his or her home-country or face removal proceedings.

K-3 visa:

The second option is a K-3 visa. If you are already married, this is one of the options you have. Please note that the religious ceremony is not sufficient to prove marriage. The marriage



needs to be registered with the appropriate government authority and you will need an official marriage certificate.

To qualify for a K-3 visa, the following must be met:

1. Petitioner is a U.S. citizen
2. Foreign spouse resides outside the U.S.
3. Seeks to enter the U.S to await the availability of an immigrant visa.
4. US citizen spouse must have filed a petition for alien relative that is pending.

The Form I-129F must be approved in the US before the consulate is able to issue a K-3 visa. Upon approval and entry into the US as a K-3 visa holder, your spouse will be able to work and travel freely. This visa is valid for two years. Your spouse must apply for adjustment of status to receive LPR status. I always recommend to my clients to adjust status at the earliest opportunity.

K-3 visas have their own limitations. A K-3 visa holder's visa will expire 30 days after the denial of an I-130 petition or adjustment of status petition; or if the consulate office abroad denies an immigrant visa petition; or if there is a divorce between the K-3 visa holder and the petitioning US citizen spouse.

In theory, K-3 petitions should be processed quicker an immigrant petition. However, in practice that is not always that case.

Immigrant petition for an alien relative

Finally, the last option is applying for an immigrant petition for an alien relative. If you are already married, this is the other option you have. The processing system is similar to that of a K-1 or K3 visa, in that the petition must be approved in the US before the case is sent to the consulate for final approval. With this petition, upon entry into the US, your spouse will receive a stamp in his or her passport indicating he or she is a legal permanent resident. Within a few weeks a legal permanent resident card will arrive in the mail.

The legal permanent resident card will be conditional for a term of two years. Thereafter, a petition to remove conditions of residence must be filed, which must be filed jointly. However, the LPR spouse can file a waiver of filing jointly if the marriage ended because of divorce/annulment, if the petitioning US citizen spouse dies, if he or she was abused, or if termination of status will result in extreme hardship.

Please note that unlike a K-1 or K-3 visa, a legal permanent resident spouse may apply for an immigrant petition for a foreign resident spouse. However, the petition will need to be approved and visa number must be available before a visa can be issued. At the time of writing this article, the waiting time for visa availability for citizens of the Indian subcontinent countries is approximately 4 years and 7 months.

Which option is best for you:

Your individual circumstances will dictate the best option for you. If you are not married, but have met in person and can meet the requirements for a K-1 visa, then K-1 might be most appropriate. If you are already married, how do you decide between K-3 or an immigrant petition? Again, your situation will dictate your petition. In theory, K-3 petitions are supposedly given a quicker processing time, making them more attractive. However, in practice, they are not always quicker than the immigrant petition.



My advice? It will depend on your personal circumstances. My general suggestion to my clients is to apply for an immigrant petition because it is cost effective. An immigrant petition only involves one set of fees to pay (in this economy, my clients tend to be ever more sensitive to cost) and one set of forms.

*Please note the above is a very brief and simple summary of the visa options for marriage. If your particular situation is not simple, please feel free to contact me, and I would be happy assist you in your application.

Tahmina Watson is the founder of Watson Immigration Law based in downtown Seattle. She was a practicing barrister in London, UK, before immigrating to the United States herself. Tahmina has been practicing US Immigration and Naturalization law since 2006. More information about her can be found at www.immigrationseattle.com or www.watsonimmigrationlaw.com. She can be contacted directly at 206-856-3808 or email her at tahmina@watsonimmigrationlaw.com.