

Department of State

§ 41.83

2. If such a visa is issued, the recipient shall be subject to such restrictions on travel within the United States as may be provided in regulations prescribed by the Attorney General.

Subpart I—Fiance(e)s and Other Nonimmigrants

§ 41.81 Fiancé(e) or spouse of a U.S. citizen and derivative children.

(a) Fiancé(e). An alien is classifiable as a nonimmigrant fiancé(e) under INA 101(a)(15)(K)(i) if:

(1) The consular officer is satisfied that the alien is qualified under that provision and the consular officer has received a petition filed by a U.S. citizen to confer nonimmigrant status as a fiancé(e) on the alien, which has been approved by the INS under INA 214(d), or a notification of such approval from that Service;

(2) The consular officer has received from the alien the alien's sworn statement of ability and intent to conclude a valid marriage with the petitioner within 90 days of arrival in the United States; and

(3) The alien has met all other qualifications in order to receive a nonimmigrant visa, including the requirements of paragraph (d) of this section.

(b) Spouse. An alien is classifiable as a nonimmigrant spouse under INA 101(a)(15)(K)(ii) when all of the following requirements are met:

(1) The consular officer is satisfied that the alien is qualified under that provision and the consular officer has received a petition approved by the INS pursuant to INA 214(p)(1), that was filed by the U.S. citizen spouse of the alien in the United States.

(2) If the alien's marriage to the U.S. citizen was contracted outside of the United States, the alien is applying in the country in which the marriage took place, or if there is no consular post in that country, then at a consular post designated by the Deputy Assistant Secretary of State for Visa Services to accept immigrant visa applications for nationals of that country.

(3) If the marriage was contracted in the United States, the alien is applying in a country as provided in part 42, § 42.61 of this chapter.

(4) The alien otherwise has met all applicable requirements in order to receive a nonimmigrant visa, including the requirements of paragraph (d) of this section.

(c) Child. An alien is classifiable under INA 101(a)(15)(K)(iii) if:

(1) The consular officer is satisfied that the alien is the child of an alien classified under INA 101(a)(15)(K)(i) or (ii) and is accompanying or following to join the principal alien; and

(2) The alien otherwise has met all other applicable requirements in order to receive a nonimmigrant visa, including the requirements of paragraph (d) of this section.

(d) Eligibility as an immigrant required. The consular officer, insofar as is practicable, must determine the eligibility of an alien to receive a nonimmigrant visa under paragraphs (a), (b) or (c) of this section as if the alien were an applicant for an immigrant visa, except that the alien must be exempt from the vaccination requirement of INA 212(a)(1) and the labor certification requirement of INA 212(a)(5).

[66 FR 19393, Apr. 16, 2001]

§ 41.82 Certain parents and children of section 101(a)(27)(I) special immigrants. [Reserved]

§ 41.83 Certain witnesses and informants.

(a) *General*. An alien shall be classifiable under the provisions of INA 101(a)(15)(S) if:

(1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and

(2)(i) The consular officer has received verification from the Department of State, Visa Office, that:

(A) in the case of INA 101(a)(15)(S)(i) the INS has certified on behalf of the Attorney General that the alien is accorded such classification, or

(B) in the case of INA 101(a)(15)(S)(ii) the Assistant Secretary of State for Consular Affairs on behalf of the Secretary of State and the INS on behalf of the Attorney General have certified that the alien is accorded such classification;

(ii) and the alien is granted an INA 212(d)(1) waiver of any INA 212(a)