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The K-1 Fiancé(e) Visa: In Brief

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Summary

The K nonimmigrant visa category was created in 1970 through P.L. 91-225, which amended the Immigration and Nationality Act (INA). Within the K visa category, the K-1 visa is a visa for fiancé(e)s of U.S. citizens and the K-2 visa is a visa for the fiancé(e)'s children. Congress later enacted legislation to provide protections for fiancé(e)s, specifically creating requirements around the use of international marriage brokers, the disclosure of the U.S. petitioner's criminal background, the provision of information to fiancé(e)s on their rights, and additional protections for minors.

A mass shooting on December 2, 2015, in San Bernardino, CA, where one of the suspected shooters entered the United States on a K-1 visa, has drawn increased attention to the visa category. This tragedy has spurred questions surrounding the K-1 visa national security screening process and any possible gaps. Some Members of Congress have suggested including a review of K-1 applicants' social media accounts into the screening process.

In order to qualify for a K-1 visa, a U.S. citizen must file on behalf of his/her fiancé(e) and provide evidence that (1) the parties have met in person within two years of the petition's filing, (2) the parties have a bona fide intention to marry, and (3) the parties are legally able and willing to be married in the United States within 90 days of the fiancé(e)'s arrival. The petitioner must first file a petition with the Department of Homeland Security's (DHS's) U.S. Citizenship and Immigration Services (USCIS). Once the petition is approved, it is sent to a U.S. Embassy or Consulate in the home country of the foreign national, where it is determined if the fiancé(e) is eligible for admission to the United States. Although the K-1 visa is a nonimmigrant visa, the fiancé(e) intends to remain in the United States and is therefore also subject to the admission requirements of immigrant visas.

K visa applicants' national security screening entails the use of biographical, biometric, and photographic data. The data are entered into consular-based databases, such as the Consular Consolidated Database (CCD) and Consular Lookout and Support System (CLASS), which flag problems that may have an impact on the issuance of a visa or matches to any derogatory information. Consular offices send suspect individuals' applications for greater review to other agencies, such as the Federal Bureau of Investigation (FBI) and the National Counterterrorism Center (NCTC). In 2013, NCTC began conducting interagency counterterrorism screening of all visa applicants and in 2015, DHS began pilot programs to incorporate social media screening into its vetting of applicants for certain immigration benefits.

Once visa applicants have been approved and their security clearances are completed, they can travel to the United States, where they must marry their U.S. citizen petitioners within 90 days of their arrival. Once married, the fiancé(e) adjusts to a conditional residency and after two years can become a lawful permanent resident.

In FY2014, the U.S. Department of State issued 35,925 K-1 visas. Asia received the largest portion of K visas at 46%, with the Philippines being the country with the highest number of K visas at 8,525 visas.

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Introduction

In 1970, the K visa category was created for foreign national fiancé(e)s of U.S. citizens. The first visa within the category, the K-1 visa, is a nonimmigrant visa[1] that grants temporary admission to the United States for fiancé(e)s in order for them to marry their U.S. citizen petitioners. Since the visa's creation, Congress has passed additional legislation that has added protections for fiancé(e)s and their children. There were 35,925 K-1 visas issued by the U.S. Department of State (DOS) in FY2014.[2]

The K-1 visa has drawn increased attention due to a mass shooting in San Bernardino, CA, on December 2, 2015. One of the suspected shooters, Tashneen Malik, reportedly came to the United States on a K-1 visa to marry the other suspected shooter, Syed Rizwan Farook. The investigation of the couple, after the fact, reportedly brought to light suspicions to the couple's support of violent jihadists.[3]

Due to these events, Congress and the public have raised questions about the K-1 visa and its security screening. For instance, how well are individuals screened for fraud and security risks, and are there any gaps in the screening process? After the shooting, President Barack Obama asked the U.S. Department of Homeland Security (DHS) to review the U.S. visa program.[4] Some members of Congress have also called for the inclusion of visa applicants' social media accounts as an added screening measure.[5]

This report will review the K-1 visa, providing information on the background of the program. Next, the report will cover the requirements of the visa and its application procedures, including the filing of a petition, the application for a visa, and the national security screening. The following section will describe K-1 visa holders' admission to the United States and their adjustment of status to lawful permanent residency. The last section will provide statistics on the issuance of the K-1 visa and the source countries of visa holders.

Background

P.L. 91-225 established the K nonimmigrant visa category[6] in 1970 for fiancés, fiancées, and the derivative children of the fiancé(e). The law amended the Immigration and Nationality Act (INA)

[1] Nonimmigrant visas are issued to individuals who will be in the United States on a temporary basis for a specific purpose. There are 24 major nonimmigrant visa categories, and over 70 specific types of nonimmigrant visas are issued currently. Most of these nonimmigrant visa categories are defined in §101(a)(15) of the INA. These visa categories are commonly referred to by the letter and numeral that denotes their subparagraph in §101(a)(15), e.g., B-2 tourists, F-1 foreign students, H-1B temporary professional workers, or J-1 cultural exchange participants.

[2] U.S Department of State, *Nonimmigrant Visa Statistics,* Table XVI(B) Nonimmigrant Visas Issued by Classification FY2000-FY2014.

[3] Matt Apuzzo, Michael S. Schmidt, and Julia Preston, "U.S. Visa Process Missed San Bernardino Wife's Zealotry on Social Media," *The New York Times,* December 12, 2015.

[4] The White House, Office of the Press Secretary, *Address to the Nation by the Presiden*t, December 6, 2015, https://www.whitehouse.gov/the-press-office/2015/12/06/address-nation-president.

[5] See for example, Office of Representative Bern Buchanan, "Buchanan: Target Terrorists' Social Media," press release, December 15, 2015, https://buchanan.house.gov/media-center/press-releases/buchanan-target-terrorists-social-media; Office of Senator John McCain, "Senator John McCain Introduces Bill Requiring DHS to Review Social Media & Databased in Foreign Background Checks," press release, December 15, 2015, http://www.mccain.senate.gov/public/index.cfm/press-releases?ID=57667844-aebf-40b5-8d0f-8203a5bee449.

[6] INA §101(a)(15)(K); 8 U.S.C. §1101(a)(15)(K).

in an effort to address the difficulties faced by U.S. citizens who wished to bring their fiancé(e)s to the United States to be married.[7] There are four subcategories within the K visa category. P.L. 91-225 created the first two categories (K-1 visa and K-2 visa), and in 2000 the Legal Immigration Family Equity Act (LIFE Act; Title XI of P.L. 106-553) created the last two categories (K-3 visa and K-4 visa). The K-1 visa is for noncitizens seeking to enter the United States to marry a U.S. citizen, and the K-2 visa is for their children. The K-3 visa is for noncitizens who married a U.S. citizen abroad and want to enter the United States while they wait for their immigration petition, or for an immigrant visa to become available, and the K-4 visa is for their children.

Subsequent legislation was enacted in order to provide protections to the fiancé(e) (also referred to as the beneficiary). The International Marriage Broker Regulation Act of 2005 (IMBRA; Title VIII, Subtitle D, of P.L. 109-162) requires the disclosure of the use of an international marriage broker[8] and the petitioner's criminal convictions for certain crimes, notably sexual crimes.[9] Additionally, IMBRA provides requirements with regard to international marriage brokers and requires the Department of State to provide beneficiaries with a pamphlet containing facts about the K-1 visa, domestic violence, and their rights.[10] The Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248) further prohibits U.S. citizens from petitioning for a K-1 visa if they have been convicted of certain offenses against a minor (unless the Secretary of DHS can determine, under his/her sole discretion, that the petitioner poses no risk to the beneficiary).

Requirements and Procedures

In order for a foreign national to be issued a K-1 visa, the petitioner who is filing on the fiancé(e)'s behalf must be a U.S. citizen and must provide the following evidence:

- The parties have met in person within two years of the petition's filing,[11] though the Secretary of DHS may waive this requirement.[12]
- The parties have a bona fide intention to marry.

[7] U.S. Congress, House Committee on the Judiciary, *Excluding Executive Officers and Managerial Personnel of Western Hemisphere Businesses from the Numerical Limitation of Western Hemisphere Immigration*, 91st Cong., 2nd sess., February 24, 1970, H.Rept. 91-851, p. 4.

[8] An international marriage broker is a corporation, partnership, business, individual, or other legal entity that charges fees for providing dating, matrimonial, matchmaking services, or other social referrals between U.S. citizens or lawful permanent residents and foreign nationals. U.S. Department of State, *Instructions for a Petition for Alien Fiancé(e), Form I-129F,* http://www.uscis.gov/sites/default/files/files/form/i-129finstr.pdf.

[9] Crimes include (1) domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse and stalking, (2) homicide, murder, manslaughter, rape, abusive sexual contact, sexual exploitation, incest, torture, trafficking, peonage, holding hostage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, or an attempt to commit any of these crimes, and (3) crimes relating to a controlled substance or alcohol on three or more occasions (8 U.S.C. §1184(d)(3)). If the petition is approved, under IMBRA, the beneficiary will be provided with a copy of the petitioner's criminal background.

[10] U.S. Department of State, *Information on the Legal Rights Available to Immigrant Victims of Domestic Violence in the United States and Facts About Immigrating on a Marriage-Based Visa*.

[11] This requirement was added through the Immigration Marriage Fraud Amendments of 1986 (P.L. 99-639).

[12] This exception can be given based on extreme hardship for the U.S. citizen petitioner or if meeting before marriage is contrary to the petitioner's or beneficiary's religious or cultural beliefs. U.S. Department of State, *Nonimmigrant Visa for a Fiancé(e) (K-1),* http://travel.state.gov/content/visas/en/immigrate/family/fiance-k-1.html.

- The parties are legally able and willing to conclude a valid marriage[13] in the United States within 90 days of the fiancé(e)'s arrival.

In addition to the determination that a foreign national is qualified for a K-1 visa, a decision must be made as to whether the foreign national is admissible or excludable under the INA.[14]

File a Petition

A U.S. citizen petitioner must file Form I-129F, *Petition for Alien Fiancé(e),* with DHS's U.S. Citizenship and Immigration Services (USCIS), along with supporting documents.[15] Additional requirements, established in IMBRA, mandate that the petitioners provide criminal records related to certain crimes and that they notify USCIS if they used an international marriage broker to meet the beneficiary. IMBRA also requires the petitioners to obtain a waiver if they have filed two or more K-1 petitions in the past or have had a K-1 petition approved in the two years before their current petition. Furthermore, if the petitioners are subject to the Adam Walsh Child Protection and Safety Act, they must demonstrate they pose no risk to the beneficiary.[16]

Apply for a Visa

After USCIS approves a petition,[17] it is sent to the U.S. Embassy or Consulate in the home country of the foreign national to determine eligibility for a K-1 visa for admission to the United States. The petitioner and beneficiary (including eligible children) must provide a completed Form DS-160, *Online Nonimmigrant Visa Application,* valid passports, divorce or death certificates for any previous spouses, police certificates from their present countries of residence and other countries they lived in for at least six months, medical examinations, evidence of financial support, photographs, evidence of relationship, and fees. Once all necessary documents are provided and security clearances are completed, the consular office schedules an interview to determine eligibility.

Although the K-1 visa is a nonimmigrant visa, due to the beneficiary's intention of remaining in the United States, the consular office treats it as an immigrant[18] visa and seeks to determine whether the individual would be admissible as an immigrant.[19] Additionally, DOS has issued instructions with regard to consideration of these applications.[20]

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[13] The legal eligibility for marriage varies across U.S. states on certain issues, such as age and ability to marry certain family members (e.g., first cousins).

[14] The grounds for inadmissibility are spelled out in §212(a) of the INA.

[15] Supporting documents include Biographic Form G-325 for the petitioner and the beneficiary, a filing fee, and evidence of the petitioner's U.S. citizenship. In order to combat fraud, USCIS also requires color photographs of the petitioner and the beneficiary.

[16] See Michael Aytes, Guidance for Adjudication of Family-Based Petitions and I-29F Petition for Alien Fiancé(e) under the Adam Walsh Child Protection and Safety Act of 2006, U.S. Citizenship and Immigration Services, HQDOMO 70/1-P, Washington, DC, February 8, 2007, http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/adamwalshact020807.pdf.

[17] The approved petition is valid for four months but can be revalidated any number of times. The consular office is authorized to issue a visa within those four months or the time of the petition's extended validation.

[18] Immigrants are legal permanent residents or foreign nationals living lawfully and permanently in the United States.

[19] 22 C.F.R. §41.81(d). For more on admissibility determinations, see CRS Report R41104, *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends,* by Ruth Ellen Wasem.

[20] For instance, at the discretion of the consular officer, he/she may suspend action or return a petition to USCIS if the beneficiary's marital history is not consistent with what is in the application, if he/she has doubts to the intentions of

National Security Screening[21]

The K visa applicant is required to submit his or her photograph and fingerprints, as well as full name (and any other name used or by which he or she has been known), age, gender, and the date and place of birth, as are all foreign nationals seeking a visa. The visa applicant's personal data are added to the Consular Consolidated Database (CCD), a biometric/biographic database that screens all visa applicants, including those seeking a K visa. CCD links with other databases to flag problems that may have an impact on the issuance of the visa, which include DHS's Automated Biometric Identification System (IDENT) and the Federal Bureau of Investigation (FBI) Integrated Automated Fingerprint Identification System (IAFIS). In addition to performing biometric checks of the fingerprints for all visa applicants, DOS uses facial recognition technology to screen visa applicants against a "watchlist" of photos of known and suspected terrorists obtained from the Terrorist Screening Center (TSC), as well as the entire gallery of visa applicant photos contained in the CCD.

To screen K visa applicants, as well as all other visa applicants, consular officers use the Consular Lookout and Support System (CLASS) database, which has name-searching algorithms to ensure matches between names of visa applicants and any derogatory information contained in CLASS. DOS reports that about 70% of the records in CLASS come from other agencies, including DHS, the FBI, and the Drug Enforcement Administration (DEA). DOS also employs an automated CLASS search algorithm that runs the names of all visa applicants against the CCD to check for any prior visa applications, refusals, or issuances.[22]

Consular officers have long relied on the Security Advisory Opinion (SAO) system, which requires a consular officer abroad to refer selected visa cases for greater review by intelligence and law enforcement agencies.[23] If consular officials receive information about a K visa applicant that causes concern, they send a dedicated and secure communication to the National Counterterrorism Center (NCTC). In a similar set of SAO procedures, consular officers send suspect names, identified by law enforcement and intelligence information, to the FBI for a name check.[24] There is also the "Terrorist Exclusion List" (TEL), which lists organizations designated as terrorist-supporting and includes the names of individuals associated with these organizations.[25]

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the parties, or if the beneficiary has a child not named in the petition. Furthermore, DOS provides guidance for consular officers dealing with beneficiaries who are found to be pregnant, K-1 visa holders who enter the United States and return abroad before marrying, and beneficiaries with more than one U.S. citizen petitioning for them. See 9 FAM §41.81 for more information.

[21] For further background, see CRS Report R43589, *Immigration: Visa Security Policies*, by Ruth Ellen Wasem.

[22] U.S. Congress, House Committee on Homeland Security, Subcommittee on Border and Maritime Security, *From the 9/11 Hijackers to Amine El-Khalifi: Terrorists and the Visa Overstay Problem*, testimony of David T. Donahue, Deputy Assistant Secretary for Visa Services, 112th Cong., 2nd sess., March 6, 2012.

[23] U.S. Congress, Senate Committee on Foreign Relations, Subcommittee on International Operations and Terrorism, *The Post 9/11 Visa Reforms and New Technology: Achieving the Necessary Security Improvements in a Global Environment*, hearing, October 23, 2003.

[24] U.S. Congress, Senate Committee on Foreign Relations, Subcommittee on International Operations and Terrorism, *The Post 9/11 Visa Reforms and New Technology: Achieving the Necessary Security Improvements in a Global Environment*, hearing, October 23, 2003.

[25] For further discussion of terrorist screening, see CRS Report RL32564, *Immigration: Terrorist Grounds for Exclusion and Removal of Aliens*, by Michael John Garcia and Ruth Ellen Wasem.

In June 2013, DOS began "Kingfisher Expansion" (KFE) in partnership with the NCTC for conducting interagency counterterrorism screening of all visa applicants.[26] The consular official submits the K visa applicants' electronic visa applications as a "vetting package" to the NCTC. In turn NCTC uses an automated process to compare the vetting package with its holdings, most notably the Terrorist Identities Datamart Environment (TIDE) on known and suspected terrorists and terrorist groups. A "hit" in KFE triggers a Washington-based interagency review of the visa application. KFE also conducts post-issuance reviews of valid visas to check for new information on emerging threats.[27]

The deadly attack in San Bernardino raised questions as to whether immigration officials should be pre-emptively trawling the social media accounts of visa applicants, after early rumors that Tashneen Malik (using a pseudonym) had posted declarations of loyalty to the Islamic State on Facebook that day. A former DHS official who currently serves as a consultant to ABC News asserted that DHS had a policy of not reviewing the social media accounts of visa applicants during his tenure at DHS. According to media accounts, the FBI was also criticized for not uncovering evidence of pro-jihadist messages that Malik reportedly had e-mailed in 2012.[28] Multiple media sources have reported that FBI Director James Comey has subsequently stated that there was "no evidence of a posting on social media" by either of the suspects in the San Bernardino shootings.[29] DHS initiated three pilot programs earlier in 2015 to specifically incorporate appropriate social media review into its vetting of applicants for certain immigration benefits.[30]

Admission to the United States and Adjustment of Status

If the beneficiary is issued a K-1 visa, it is normally valid for six months. DHS Customs and Border Protection (CBP) officers inspect all arrivals to the United States at ports of entry and again screen the K visa holder against the various DHS databases and "watch lists."[31] Once in the United States, the K-1 nonimmigrant is required to marry the U.S. citizen petitioner within 90 days. K-1 visa holders are permitted to work in the United States during this time if they file for

[26] KFE also coordinates with DHS (including CBP and U.S. Immigration and Customs Enforcement (ICE), the FBI, and the FBI's Terrorist Screening Center.

[27] U.S. Congress, House Committee on Oversight and Government Reform, Subcommittee on National Security, *Hearing on Securing the U.S. Border, B1/B2 Visas and Border Crossing Cards*, testimony of Edward J. Ramotowski, Deputy Assistant Secretary for Visa Services, 113th Cong., 1st sess., November 14, 2013.

[28] Brian Ross, Rhonda Schwartz, and James Gordon Meek, "Secret US Policy Blocks Agents From Looking at Social Media of Visa Applicants, Former Official Says," *ABC News*, December 14, 2015; Damian Paletta, "U.S. Working on Plan to Scrutinize Social Media in Visa Reviews," *The Wall Street Journal*, December 14, 2014; and, Lucy Schouten, "San Bernardino Shooter Posted Jihadi Facebook Message in 2012: How Should FBI Respond?" *The Christian Science Monitor*, December 15, 2015.

[29] Joseph Ax, "FBI Director: San Bernardino Shooters Never Expressed Support For Jihad On Social Media," Reuters, December 16, 2015; and Julian Hattem, "FBI: 'No Evidence' Calif. Shooters Supported Jihad on Social Media," *The Hill*, December 16, 2015.

[30] Damian Paletta, "U.S. Working on Plan to Scrutinize Social Media in Visa Reviews," *The Wall Street Journal*, December 14, 2014; and email communication from U. S. Department of Homeland Security Office of Legislative Affairs to Ruth Wasem, December 14, 2015.

[31] For further discussion of border inspections, see CRS CRS Report R43356, *Border Security: Immigration Inspections at Ports of Entry*, by Lisa Seghetti.

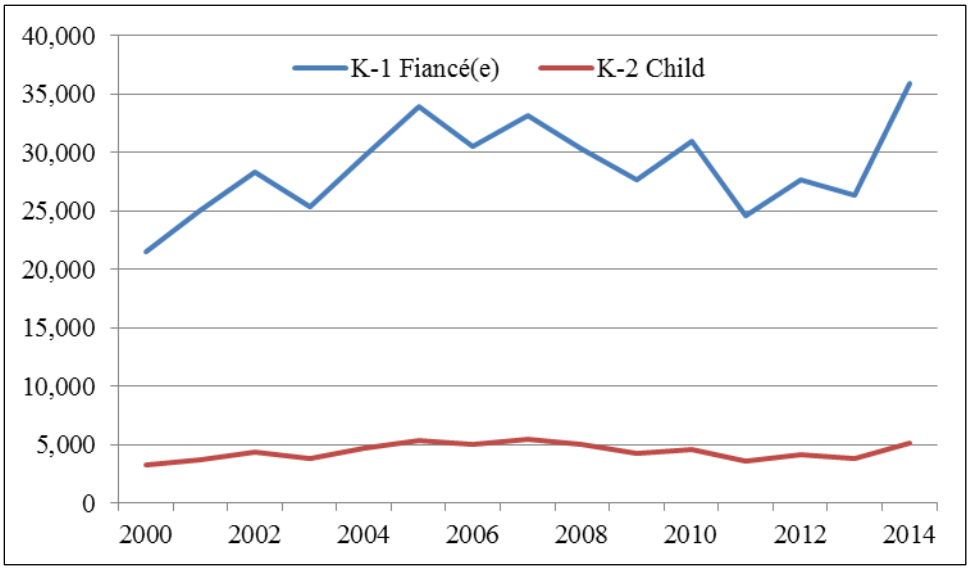
employment authorization.[32] The foreign national is eligible for lawful permanent residence as an immediate relative if the marriage takes place within 90 days and the fiancé(e) is otherwise admissible.[33] This status is conditional for two years.[34] If the marriage does not occur within 90 days, the K visa expires and the foreign national must depart from the United States.[35]

K-1 and K-2 Statistics

From FY2000 to FY2014, DOS issued a total of 430,900 K-1 visas, with an additional 65,833 K-2 visas issued to the children of K-1 visa beneficiaries. Since FY2000, K-1 visa issuances have fluctuated, though they have experienced an overall rise. FY2014 was the peak year thus far in the 21s century for fiancé(e) visas, with DOS issuing 35,925 K-1 visas, an increase of 36% from FY2013. The lowest number of K-1 visa issuances in the 21st century, at 21,471 visas, was in FY2000.

Figure 1. Visas Issued for Fiancé(e)s of U.S. Citizens and Their Children

FY2000 to FY2014



Source: U.S Department of State, *Nonimmigrant Visa Statistics,* Table XVI(B) Nonimmigrant Visas Issued by Classification FY2000-FY2014.

In terms of source countries for all K visa holders, the Philippines led with 8,525 K visas in FY2014. In comparison, Chinese nationals were issued the second largest number of K visas at 2,177 visas; and Mexican nationals were issued the third largest portion of K visas at 2,101 visas. In FY2014, Asia was the top receiving region of K visas with 18,864, or 46% of all K visas issued. Additionally, North America and Central America was the second largest source region

[32] 8 CFR §247a.12(a)(6). The beneficiary must file Form I-765, *Application for Employment Authorization,* to receive work authorization.

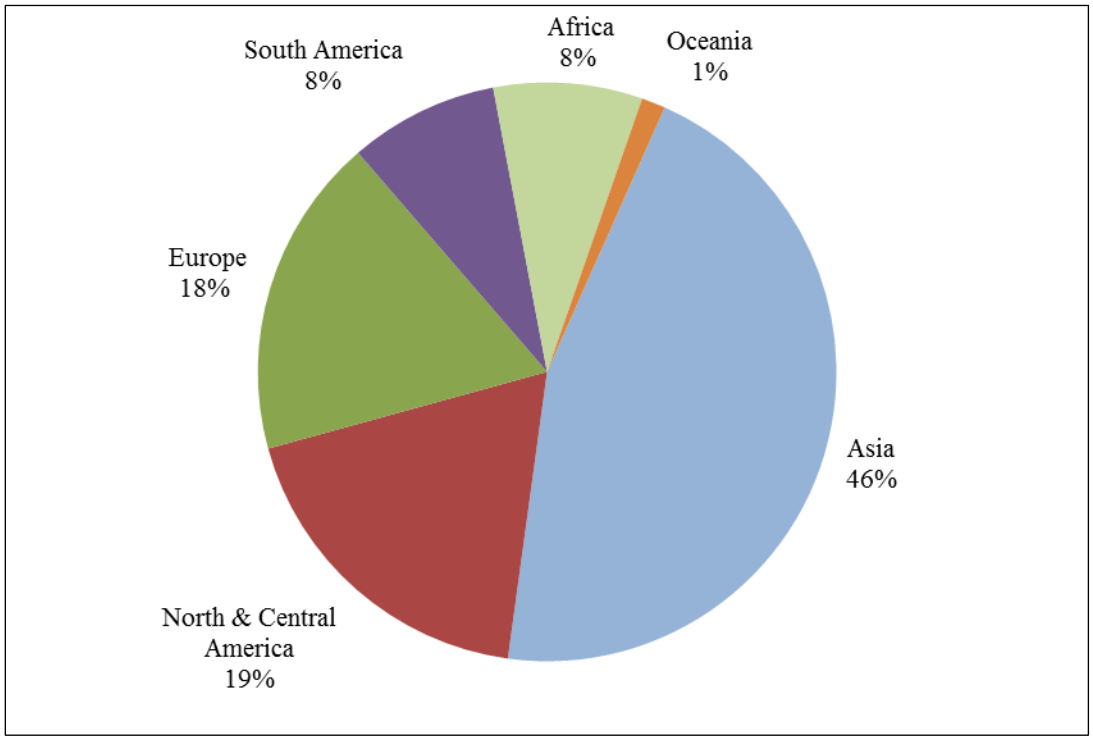
[33] For more information on family-based visas, see CRS Report R43145, *U.S. Family-Based Immigration Policy,* by William A. Kandel.

[34] For more information on conditional resident status, see Ibid.

[35] 8 U.S.C. §1184(d)(1). Additionally, K visa holders are not eligible to change to another nonimmigrant classification (8 C.F.R. §248.2(2)) or extend their temporary stay (8 C.F.R. §214.1(c)).

with 19% of K visas, while Europe was the third largest source region with 18% of K visas. **Figure 2** presents the regional breakdown of K visas that DOS issued in FY2014, and **Figure 3** shows the top 12 source countries.[36]

Figure 2. K Visas Issued in FY2014 by Region of the World

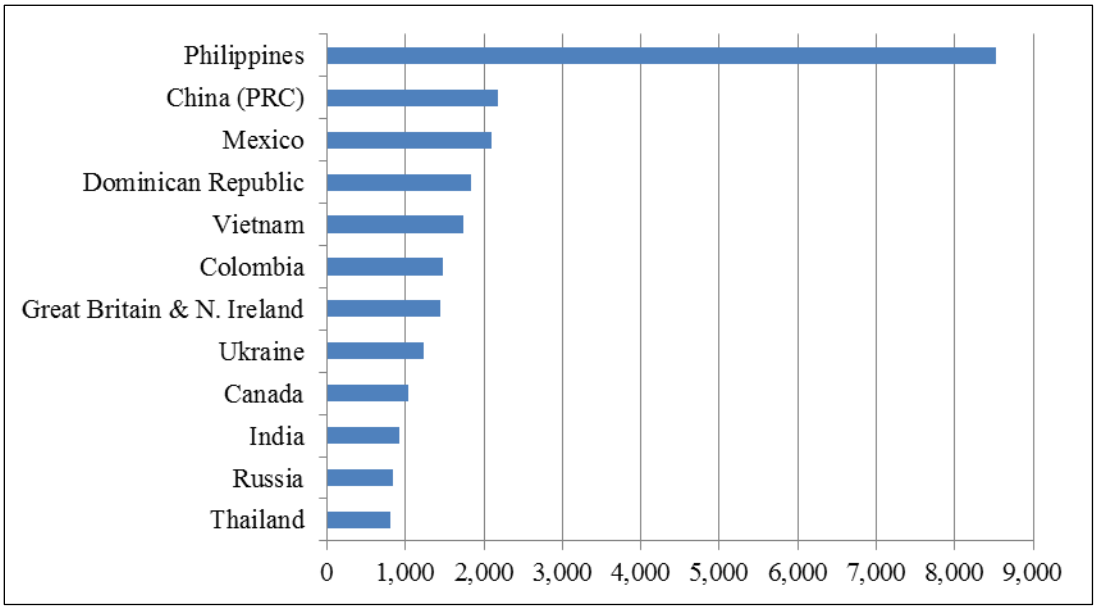


Source: U.S Department of State, *Nonimmigrant Visa Statistics,* Table XVII Nonimmigrant Visas Issued by Classification and Nationality, FY2014.

Notes: Regional statistics include 393 K-3 visas and 71 K-4 visas issued in FY2014.

[36] State Department Office of Visa Statistics' Table XVII Nonimmigrant Visas Issued by Classification and Nationality does not breakdown the K visas by sub-classification and thus includes 393 K-3 visas and 71 K-4 visas issued in FY2014.

Figure 3. Top Twelve Source Countries for K Visas, FY2014



Source: U.S Department of State, *Nonimmigrant Visa Statistics,* Table XVII Nonimmigrant Visas Issued by Classification and Nationality, FY2014.

Notes: Country statistics include 393 K-3 visas and 71 K-4 visas issued in FY2014.

Author Information

William A. Kandel
Analyst in Immigration Policy

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Ruth Ellen Wasem, former CRS Specialist in Immigration Policy, and Carla N. Argueta, former CRS Analyst in Immigration Policy, authored previous versions of this report.

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