

January 12, 2010

Dear Sir/Madam:

The “International Marriage Broker Regulation Act” (IMBRA) is a federal law (signed in January 2006) that seeks to protect foreign women from abuse who come to the United States to marry men they meet through international marriage brokers (IMBs). It is a relatively new law and some IMBs have raised good questions regarding its requirements and parameters. In an effort to clarify IMBRA and support IMBs in their efforts to comply with IMBRA, please find attached an advisory prepared by the Tahirih Justice Center (Tahirih).

Tahirih is a legal advocacy organization that provides protection for women and girls fleeing human rights abuses. Since opening its doors in 1997, through direct legal services and social and medical referrals, Tahirih has assisted over 10,000 women and children fleeing abuses such as domestic violence, rape, sexual assault, human trafficking, female genital mutilation, torture, “honor” crimes, and forced marriage. Tahirih also works to pass laws, develop regulations, transform policies, and establish precedent to bring about systemic change that will ensure the long-term protection of women and girls from violence.

Tahirih led a national coalition that drafted and advocated for the passage of IMBRA, in an effort to protect foreign women using the services of international marriage brokers from abuse. We recognize that many matches made through international marriage brokers result in happy marriages. To prevent those unfortunate situations of abuse, IMBRA provides critical information that women need to make informed decisions and to find help if they need it.

The attached advisory further explains IMBRA’s provisions and:

- Breaks down the definition of an “international marriage broker” and outlines how to determine whether a business falls within that definition;
- Summarizes what an international marriage broker must do to comply with IMBRA, and the penalties for non-compliance;
- Suggests “practical tips” to facilitate compliance; and
- Includes “notes” that give supplemental or background information about IMBRA’s provisions.

If you have questions, or suggestions for improvements to this Advisory, we invite you to contact us at policy@tahirih.org. To learn more about IMBRA and Tahirih’s work on this issue, please visit our website <http://www.tahirih.org/advocacy/policy-areas/imb-campaign/>.

Sincerely,



Jeanne Smoot
Director of Public Policy

ADVISORY FOR INTERNATIONAL MARRIAGE BROKERS ABOUT THE INTERNATIONAL MARRIAGE BROKER REGULATION ACT

This information is not intended to provide legal advice and should not be relied upon in lieu of consultation with an attorney. The materials have been prepared for education and information purposes only. Transmission of the information is not intended to create, and receipt does not constitute, a lawyer-client relationship between the author(s) and you or any other user.

TABLE OF CONTENTS

PART I. FREQUENTLY ASKED QUESTIONS¹

1. What is the International Marriage Broker Regulation Act (IMBRA)?
2. How is an “international marriage broker” (IMB) defined under IMBRA?
3. How does IMBRA reduce the potential for abuse?
4. Will IMBRA prevent American men from marrying foreign women?
5. Is IMBRA causing delays in the processing of “K” fiancé(e) or spouse visas?
6. Has IMBRA taken effect?

PART II. IMB OBLIGATIONS AND PENALTIES FOR NON-COMPLIANCE

1. Collect background information on a U.S. client, provide this and other required information to the foreign client² he³ wants to contact, and obtain her written consent before putting him in contact with her.
2. Maintain confidentiality and adhere to other restrictions on the use and disclosure of background information.
3. Refrain from profiling or providing the personal contact information of anyone under age 18.

IMBRA imposes civil and criminal penalties (up to 5 years imprisonment, and up to \$25,000 in fines per violation) for non-compliance.

PART III. APPENDICES

- Appendix A: Sample IMB checklist
Appendix B: How does IMBRA affect the “K” fiancé(e) or spouse visa application and approval process?

¹ For further information regarding IMBRA, including a Summary of IMBRA and additional FAQs, please visit <http://www.tahirih.org/advocacy/policy-areas/imb-campaign/>.

² For ease of reference, this document uses the term “foreign client” to refer to “foreign national client,” as defined in IMBRA.

³ Although IMBRA uses gender-neutral terms (i.e., does not use “he” or “she”), for ease of reference, this document often refers to the U.S. client or U.S. petitioner for a visa as a male, and the foreign client or foreign visa beneficiary as a female.

PART I. FREQUENTLY ASKED QUESTIONS

I. WHAT IS THE INTERNATIONAL MARRIAGE BROKER REGULATION ACT (IMBRA)?

The International Marriage Broker Regulation Act of 2005 (IMBRA) was signed into law on January 5, 2006 as part of the reauthorized Violence Against Women Act.⁴ In an effort to prevent the abuse and exploitation of so-called “mail-order brides,”⁵ the law imposes regulations on the international marriage broker (IMB) industry as well as mandates certain changes to the process by which a U.S. citizen may petition to sponsor a foreign fiancé(e) or spouse to come to the United States (on either a “K1” (fiancé(e)) or “K3” (spouse) visa). The Tahirih Justice Center helped draft IMBRA and mobilize support for its passage.

2. HOW IS AN “INTERNATIONAL MARRIAGE BROKER” (IMB) DEFINED UNDER IMBRA?

An “international marriage broker” is first defined broadly as a business or other legal entity that charges fees for providing matchmaking services or social referrals between U.S. citizens/permanent residents and foreign nationals. If an IMB falls within this broad definition, it will be regulated by IMBRA, unless it qualifies for either of two exceptions.

The first exception is for nonprofit religious or cultural matchmaking services. The second exception is for dating services (1) that do not match U.S. citizens/permanent residents with foreign nationals as their “principal business” AND (2) that charge “comparable rates” and offer “comparable services” to all clients (men or women, American or foreign). Most businesses will determine whether they fall within IMBRA’s definition of an IMB on the basis of the second exception. Below is additional guidance regarding this exception.



Practical Tip: A business that does not charge comparable rates OR does not offer comparable services for its male and female clients falls under the definition of an IMB and is regulated by IMBRA.

For example:

- **Not charging comparable rates:** When an IMB charges a male client a fee to access its services — such as translating letters, providing an online “chat room,” serving as a 3rd party intermediary in phone calls, or hosting social gatherings — but the IMB does not charge a female client (or charges her very little compared to what the male client is charged) for those same services (i.e., for receiving those translated letters, joining the chat room, participating in those phone calls, attending those social gatherings, etc.), then the IMB is not charging comparable rates.
- **Not offering comparable services:** When an IMB offers profiles of female clients on its website for its male clients to peruse (but does not profile male clients at all or not to the same extent), hosts social gatherings that are skewed so that women appreciably outnumber men, or organizes travel to foreign countries to enable male clients to meet female clients but not vice versa, then the IMB is not offering comparable services.

Exact language in IMBRA defining an “international marriage broker”:

IN GENERAL. —The term “international marriage broker” means a corporation, partnership, business, individual, or other legal entity, whether or not organized under any law of the United States,⁶ that charges fees for providing dating, matrimonial, matchmaking services, or social referrals between United States citizens or nationals or aliens lawfully

⁴ The Violence Against Women and Department of Justice Reauthorization Act of 2005, Public Law 109-162, Subtitle D §§ 831-834 (codified as part of the Immigration and Nationality Act. 8 U.S.C. §§ 1184(d); 1184 (r); and 1375a). [Hereinafter IMBRA].

⁵ The Tahirih Justice Center and others prefer not to use this term because it promotes harmful stereotypes about women who choose to use the services of international marriage brokers.

⁶ Note that IMBRA includes the language “whether or not [the entity is] organized under any law of the United States.” Therefore, an IMB that does business with U.S. clients need not be U.S.-based to be subject to IMBRA.

admitted to the United States as permanent residents and foreign national clients by providing personal contact information or otherwise facilitating communication between individuals.

(B) EXCEPTIONS.—Such term does not include—

- (i) a traditional matchmaking organization of a cultural or religious nature that operates on a nonprofit basis and otherwise operates in compliance with the laws of the countries in which it operates, including the laws of the United States; or
- (ii) an entity that provides dating services if its principal business is not to provide international dating services between United States citizens or United States residents and foreign nationals and it charges comparable rates and offers comparable services to all individuals it serves regardless of the individual's gender or country of citizenship.⁷



Note: IMBRA differentiates IMBs from other types of international matchmaking and dating services because Congress perceived that IMBs' profit model and marketing practices uniquely place women at greater risk for abuse.⁸

3. HOW DOES IMBRA REDUCE THE POTENTIAL FOR ABUSE?

IMBRA provides foreign women with information so that they can make informed choices for their safety, including information that might help to predict abusive behavior by a potential American spouse, and information about where they can turn for help to escape abuse (such as information about hotlines, shelters, protection and restraining orders, etc.⁹). In addition, IMBRA's disclosure requirements may dissuade those with violent histories from using IMBs. IMBRA also establishes visa sponsorship limits to prevent serial predators from using the marriage-based immigration process to find vulnerable foreign women that they think they can abuse.

4. WILL IMBRA PREVENT AMERICAN MEN FROM MARRYING FOREIGN WOMEN?

No. IMBRA does not prevent anyone from marrying whomever they choose — it just enables informed choices to be made, and prevents the marriage-based immigration process from being misused. The drafters of IMBRA worked hard over several years to advocate for the right balance to be struck in IMBRA — to promote a self-help protective scheme that would prevent needless tragedies while permitting people of good intentions to continue to find international romance through dating and matchmaking services.

5. IS IMBRA CAUSING DELAYS IN THE PROCESSING OF “K” FIANCÉ(E) OR SPOUSE VISAS?

No. As often happens when new government processes are mandated, the issuance of “K” fiancé(e) or spouse visas was delayed for some months after IMBRA was enacted, but these issues were resolved by the fall of 2006.¹⁰ Since the fall of 2006, the changes that IMBRA made to the marriage-based immigration process have not increased the average wait time for the issuance of a K visa.

6. HAS IMBRA TAKEN EFFECT?

Yes. Most of IMBRA took effect on March 6, 2006, 60 days after its enactment. However, the U.S. government has still not finalized the IMBRA-mandated information pamphlet that will advise foreign fiancé(e)s and spouses about the legal rights and resources available in the U.S. to immigrant victims of domestic violence and other

⁷See IMBRA *supra* note 4, at § 833(e)(4)(B)(4)(A) (codified at 8 U.S.C. § 1375a(e)(4)).

⁸ For more about the concerns that motivated Congress to regulate this segment of the international matchmaking and dating industry, please see Question 8 of Tahirih's general FAQ document about IMBRA available at <http://www.tahirih.org/advocacy/policy-areas/imb-campaign/>.

⁹ This information is provided in the form of an IMBRA-mandated, government-prepared information pamphlet about the legal rights and resources available in the U.S. to immigrant victims of domestic violence and other crimes.

¹⁰ See Eduardo Porter, Law on Overseas Brides is Keeping Couples Apart, N.Y. Times, Oct. 17, 2006, at 1 (<http://www.nytimes.com/2006/10/17/us/17brides.html?pagewanted=1>) (“A spokesman for the immigration service said that most of the backlogged visa applications frozen in June had been processed.”)

crimes. IMBs have up to 30 days after the U.S. government makes the pamphlet available before they are themselves obligated to distribute it to their foreign clients.

At present, therefore, IMBs are obligated to fulfill all of their obligations under IMBRA except for the obligation to distribute the information pamphlet to their foreign clients.

All 93 U.S. Attorney's offices around the United States have been given guidance regarding IMBRA in order to prepare them to enforce the law and impose penalties.¹¹ In addition, an October 2009 government press release confirmed that the Office of the Chief Administrative Hearing Officer within the Department of Justice has been assigned to hear civil cases of IMBRA violations.¹²

PART II. IMB OBLIGATIONS AND PENALTIES FOR NON-COMPLIANCE

IMBRA primarily requires IMBs to obtain and disclose certain background information and to make sure that they have the informed consent of a foreign client before putting a U.S. and foreign client¹³ in contact with each other. IMBRA requires IMBs to obtain from their U.S. client background information about the following: (1) protection orders and violent crimes, as well as crimes related to prostitution and alcohol/controlled substances; (2) marital history and children; and (3) states/countries in which the U.S. client has previously resided. After collecting this information from the U.S. client, the IMB must provide it to the foreign client and obtain her written consent to release her personal contact information to that U.S. client.

IMBRA also requires IMBs to maintain confidentiality and adhere to other limits on the use and disclosure of the background information they obtain. In addition, IMBRA prohibits IMBs from profiling or providing the personal contact information of anyone under age 18.

Below is a summary of all IMB obligations under IMBRA.



Practical Tips: The tips in this section are suggestions for an IMB to keep a paper record of its compliance with IMBRA; such documentation, although not explicitly required by the law, will help streamline the process of complying with IMBRA and help to defend against any allegations made that an IMB is not complying with the law.

I. Collect background information on a U.S. client, provide this and other required information to the foreign client he wants to contact, and obtain her written consent before putting him in contact with her.¹⁴

Below are details on what this obligation entails:

(A) Conduct a search of the National Sex Offender Public Registry (NSOPR) for information on the U.S. client. The registry is located at <http://www.nsopr.gov/Core/Conditions.aspx>.



Note: IMBRA requires an IMB to search not only the NSOPR but also the “relevant State sex offender public registry for any State not yet participating” in the NSOPR. This is because when IMBRA

¹¹ The United States Sentencing Commission notified all 93 U.S. Attorney's offices nationwide and the public about the newly created penalties for IMB violations of IMBRA. Sentencing Guidelines for United States Courts, 72 Fed. Reg. 4,384 (Jan. 30, 2007); Sentencing Guidelines for United States Courts, 72 Fed. Reg. 28,574, 28,575 (May 21, 2007).

¹² See Press Release, U.S. Dept. of Justice, Executive Office for Immigration Review, EOIR Office of the Chief Administrative Hearing Officer (Oct. 13, 2009) (<http://www.justice.gov/eoir/press/09/OCAHOFactSheetREVISED101309.htm>).

¹³ Under IMBRA, a “U.S. client” is a U.S. citizen or permanent resident who uses the services of an IMB, where a “debt is incurred” or a “payment is made” to use those services. By contrast, a “foreign national client” is a person who is not a U.S. citizen or permanent resident and who uses the services of an IMB (whether or not she incurs any debt or makes any payment to use those services). Note: Regardless of whether a person falls under the definition of “foreign national client” or “U.S. client,” some provisions under IMBRA encompass all “individuals.”

¹⁴ See IMBRA *supra* note 4, at §§ 833(d)(2) and (d)(3)(A) (codified at 8 U.S.C. §§ 1375a(d)(2) and (d)(3)(A)).

was passed, the NSOPR did not yet contain all 50 states in its database. Since all 50 States now participate in the NSOPR, an IMB is no longer required to check state registries as well as the NSOPR.

(B) Request from the U.S. client certain background information about his violent and other criminal history and personal history, and obtain a signed certification¹⁵ from the U.S. client about the information requested. The signed certification must be accompanied by either documentation or an attestation.



Note: If the U.S. client has documentation (i.e. a copy of the court, police or other official record), it should be attached as support to his signed certification responding to the information requests below. If the U.S. client does not have such documentation, to fulfill the attestation requirement in IMBRA, the U.S. client should include in his signed certification sufficient details to substitute for that documentation in his responses to the information requests below.

Under IMBRA, an IMB must ask a U.S. client to disclose:

- **Protection orders.** Any temporary or permanent civil protection order or restraining order issued against the U.S. client.
- **Violent crimes.** Any Federal, State, or local arrest or conviction of the U.S. client for homicide, murder, manslaughter, assault, battery, domestic violence, rape, sexual assault, abusive sexual contact, sexual exploitation, incest, child abuse or neglect, torture, trafficking, peonage, holding hostage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, or stalking.
- **Prostitution-related crimes.** Any Federal, State, or local arrest or conviction of the U.S. client for—
 - solely, principally, or incidentally engaging in prostitution;
 - a direct or indirect attempt to procure prostitutes or persons for the purpose of prostitution; or
 - receiving, in whole or in part, of the proceeds of prostitution.
- **Alcohol/Controlled substance-related crimes.** Any Federal, State, or local arrest or conviction of the U.S. client for offenses related to controlled substances or alcohol.
- **Marital history.** Marital history of the U.S. client, including whether the client is currently married, whether the client has previously been married and how many times, how previous marriages of the client were terminated and the date of termination, and whether the client has previously sponsored an alien to whom the client was engaged or married.
- **Children.** The ages of any of the U.S. client's children who are under the age of 18.
- **States/Countries of residence.** All states and countries in which the U.S. client has resided since the client was 18 years of age.



Practical Tip: Create a certification form for the U.S. client to complete that requests all the background information that IMBRA requires (listed above). To satisfy the certification requirement in IMBRA, the form can include the following language, with a signature and date line: “I, (U.S. client name), certify that all the information included on this form is true and complete to the best of my knowledge and belief, and any documentation (if attached) is a true copy of official records.”

¹⁵ The signed certification can be in written or electronic form.

(C) Provide the required disclosures to the foreign client about the U.S. client. All disclosures must be provided in the foreign client’s primary language¹⁶ and must include a copy of the information below.

- ✓ Any records retrieved from the IMB’s search of the National Sex Offender Public Registry (or documentation confirming that the IMB’s search retrieved no records).
- ✓ The background information received from the U.S. client, in response to the IMB’s inquiry.
- ✓ A copy of the government-prepared information pamphlet about the legal rights and resources available in the United States to immigrant victims of domestic violence and other crimes.



Note: As of December 2009, the government has not yet made this information pamphlet available for distribution. An IMB’s obligation to provide a copy of the pamphlet will take effect 30 days after the government makes the pamphlet available.

(D) Obtain the written consent of the foreign client prior to releasing her “personal contact information” to that specific U.S. client.

What does IMBRA mean by “personal contact information”?

IMBRA regulates a wide range of IMB activities in order to effectuate the protective purpose of the law. Thus, IMBRA defines “personal contact information” as information, or a forum to obtain such information, that would permit individuals to contact each other. This includes:

- **Name or address.** Name or residential, postal, electronic mail, or instant message address.
- **Phone number.** The telephone, pager, cell phone, or fax number, or voice message mailbox.
- **Facilitating face-to-face meetings.** The provision of an opportunity for a in-person meeting.

What are some examples of IMB activities that are encompassed within IMBRA’s definition of “personal contact information”?

- Posting on a website contact information for foreign clients, including email addresses, phone numbers, or mailing addresses.
- Hosting or referring clients to group message boards or online chat rooms that allow them to exchange their personal contact information directly.
- Facilitating a 3-way telephone call, with the IMB serving as an intermediary, between a U.S. client and a foreign client.
- Offering video profiles of foreign clients for its U.S. clients, if the videos contain any “personal contact information” of the foreign client.
- Organizing social gatherings in a foreign country for U.S. clients to meet foreign clients¹⁷ from that country.

These examples of IMB behavior are encompassed within IMBRA’s definition of “personal contact information” either because they fall within one of the types of “personal contact information” specifically listed in the law, or because they provide a forum to obtain such information, which is also included in IMBRA’s definition of “personal contact information.”

¹⁶ Primary language typically refers to a language a foreign client is proficient in, often times an official language of the country she is from. IMBRA does not require IMBs to provide information in a foreign client’s native language (typically, the language she acquired as a child and/or uses in her home or particular region).

¹⁷ As long as a woman utilizes the services of an IMB, including by simply attending a social gathering, she is considered a “foreign client” under IMBRA. See footnote 12. Thus, before a woman can attend such a social gathering, an IMB must fulfill all the obligations that IMBRA imposes with respect to such a foreign client (including that the IMB must gather information on the U.S. clients attending the social gathering, provide that information to her, and obtain her consent to meet those U.S. clients).

Before connecting clients in ANY of the ways listed above, an IMB must follow the information-gathering and disclosure requirements under IMBRA.



Practical Tip: Create a written¹⁸ consent form for a foreign client to sign that authorizes the IMB to release her contact information to a particular U.S. client. Such a form might include:

A list of what should be provided to the foreign client:

- ✓ Any records retrieved from the IMB's search of the National Sex Offender Public Registry (or documentation confirming that the IMB's search retrieved no records).
- ✓ The background information received from the U.S. client, in response to the IMB's inquiry.
- ✓ A copy of the government-prepared information pamphlet about the legal rights and resources available in the United States to immigrant victims of domestic violence and other crimes.

A signature and date line with the following language:

"I, (foreign client name), have received all the information listed above in my primary language and agree for (international marriage broker name) to put (U.S. client) in contact with me."

2. Maintain confidentiality and adhere to other restrictions on the use and disclosure of background information.

Recognizing the sensitivity of some of the background information IMBs are required to collect under IMBRA, the law creates certain restrictions on the use and disclosure of that information by an IMB, as summarized below.

(A) An IMB may not knowingly misuse any information obtained through IMBRA's disclosure requirements.¹⁹

IMBRA penalizes anyone who knowingly discloses, uses, or causes to be used, any information obtained by an IMB as a result of its information-gathering requirements, for any purpose other than to fulfill the IMB's disclosure requirements under IMBRA. Misuse of information includes any use of the information to threaten, intimidate or harass someone.

(B) An IMB must keep confidential the names and locations of third parties that are revealed in the background information obtained from U.S. clients.²⁰

IMBRA seeks to disclose necessary information without compromising the safety and privacy of 3rd parties such as victims of crimes. Therefore, IMBRA requires IMBs to keep confidential the names and locations of 3rd parties who may be listed on background information obtained, for example, the name of an ex-wife who obtained a protection order against her spouse. IMBRA does not prevent IMBs from disclosing the relationship between the U.S. client involved and the victim of a crime/beneficiary of a protection order (E.g. "ex-wife").

(C) An IMB must limit the release of a foreign client's personal contact information to only an existing U.S. client, not to potential U.S. clients, or to any other entity (such as another IMB).²¹

IMBRA sought to prevent IMBs from circumventing the disclosure requirements by releasing personal contact information to the general public or to potential male clients on a "free trial basis," as well as to other IMBs with whom they may be affiliated.

¹⁸ Remember, although the U.S. client's signed certification can be electronic, the foreign client's signed consent must be in writing.

¹⁹ See IMBRA *supra* note 4, at § 833(d)(3)(C) (codified at 8 U.S.C. § 1375a(d)(3)(C)).

²⁰ See IMBRA *supra* note 4, at § 833(d)(3)(B) (codified at 8 U.S.C. § 1375a(d)(3)(B)).

²¹ See IMBRA *supra* note 4, at § 833(d)(4) (codified at 8 U.S.C. § 1375a(d)(4)).

3. Refrain from profiling or providing the personal contact information of anyone under age 18.²²

An IMB cannot provide the personal contact information, photograph, or even general information about the background or interests of anyone under the age of 18.



Practical Tip: Request that the foreign client provide you with a copy of her birth certificate or a signed certification that she is over 18, before you agree to take her as a client. Keep this information on file.



BE ADVISED: PENALTIES FOR VIOLATIONS OF IMBRA

For violations of most obligations under IMBRA, an IMB is subject to a civil penalty of \$5,000 - \$25,000 per violation or attempted violation, criminal penalties of not more than five years in prison, or both.²³

For misuse of information, an IMB is subject to a fine, or imprisonment of not more than 1 year, or both.²⁴



Note: In addition to civil and criminal penalties that IMBRA imposes on IMBs, penalties may also be imposed under other federal and state laws, including common law fraud, negligence or tort claims, or under consumer protection statutes.²⁵

²² See IMBRA *supra* note 4, at § 833(d)(1) (codified at 8 U.S.C. § 1375a(d)(1)). This is one of the obligations in IMBRA that is owed to all individuals, regardless of gender or whether or not a person falls under the definition of “foreign client” or “U.S. client.”

²³ See IMBRA *supra* note 4, at § 833(d)(5)(A)(i) (codified at 8 U.S.C. § 1375a(d)(5)(A)(i)).

²⁴ See IMBRA *supra* note 4, at § 833(d)(3)(C) (codified at 8 U.S.C. § 1375a(d)(3)(C)).

²⁵ Some states (including Texas, Hawaii, Washington, Missouri, and New Jersey) have also passed legislation to specifically regulate IMBs. For example, Texas, Hawaii and Washington have enacted laws requiring IMBs to apprise the women they recruit of the marital and criminal backgrounds of their prospective husbands under certain circumstances. Texas also requires that the women be given information about “basic rights” applicable to a non-citizen. In New Jersey, an IMB must undergo a criminal background check. In Washington and Hawaii, an IMB’s violations trigger the state consumer protection statutes, which typically provide awards of steep monetary damages and attorney’s fees to the winning party.

APPENDIX A

SAMPLE IMB CHECKLIST

Before an IMB advertises the photograph, profile or personal contact information of anyone, the IMB must:

- ✓ Confirm that he or she is over 18 years old

When a U.S. client expresses interest in a foreign client, the IMB must do the following before providing the U.S. client with the foreign client's personal contact information:

- ✓ Request the IMBRA-required background information from the U.S. client
- ✓ Obtain a signed certification from the U.S. client about the requested background information, together with documentation (or an attestation) (signature/transmission of certification and documentation can be electronic)
- ✓ Review the background information received and any accompanying documentation, and redact the names and locations of any 3rd party individuals contained therein (e.g., persons for whose protection a restraining order was issued, or victims of crimes), to maintain their confidentiality
- ✓ Check the National Sex Offender Public Registry (NSOPR) for records regarding the U.S. client
- ✓ Provide the foreign client with responses from the U.S. client regarding the IMBRA-required background information, translated into her primary language
- ✓ Provide the foreign client with any records retrieved from the IMB's check of the NSOPR, or documentation that no records were retrieved, translated into her primary language
- ✓ Provide the foreign client with a copy of the U.S. government-prepared information pamphlet, translated into her primary language²⁶
- ✓ Obtain the foreign client's signed, written consent to release her personal contact information

²⁶ This requirement has not yet taken effect because the pamphlet is not yet available for distribution. The requirement will take effect 30 days after the government makes the pamphlet available.

HOW DOES IMBRA AFFECT THE “K” FIANC(É)E OR SPOUSE VISA APPLICATION AND APPROVAL PROCESS?

- (1) **A U.S. “petitioner” (the American visa sponsor) is asked to disclose additional information on the visa petition form.** Under IMBRA, a U.S. petitioner is asked information about certain criminal convictions²⁷ and about whether he met his foreign fiancée/spouse through an IMB.
- (2) **A foreign visa “beneficiary” (the foreign fiancée or spouse) is given additional information about the U.S. visa petitioner, and her rights, before and during her visa interview²⁸ at the U.S. consulate abroad.**

The foreign visa beneficiary is given:

- ✓ A copy of the U.S. petitioner’s visa petition form (I-129F form), which includes IMBRA-mandated questions about his background.
- ✓ Any information that the U.S. government obtains from its own criminal background check on the U.S. petitioner.
- ✓ A pamphlet advising the foreign visa beneficiary about the marriage-based immigration process and the rights and resources available to domestic violence victims in the United States.

The foreign visa beneficiary will be asked:

- ✓ Whether she met the U.S. petitioner through an IMB, and whether that IMB gave her the information the IMB was required to provide under IMBRA.



Note: IMBRA mandates no new background checks. For some time, the U.S. government instituted mandatory background checks on all beneficiaries and petitioners for all immigration benefits and services, including U.S. citizen petitioners. When IMBRA became law in January 2006, it simply mandated that the government share the criminal background information that it already routinely collects on U.S. visa petitioners.

- (3) **Limits have been placed on how many and how often “K1” visa petitions may be filed for foreign fiancé(e)s.** These limits are intended to prevent serial sponsorship by U.S. petitioners with violent criminal records.

Limits: IMBRA limits a U.S. petitioner’s sponsorship of “K1” visas to 2 total, with no less than 2 years between the filing of the last approved petition and the current petition.

Waiver: If a U.S. petitioner has reached these limits, then he must seek a waiver of the limits and justify why it is appropriate in his circumstances. If a U.S. petitioner has a record of violent criminal offenses, the waiver will be denied.²⁹

- (4) **A U.S. petitioner is prohibited from simultaneously seeking “K1” visas for multiple fiancé(e)s.**

²⁷ For specifics about the information requested, please see <http://www.uscis.gov/files/form/I-129F.pdf>.

²⁸ See IMBRA *supra* note 4, at § 833(a)(5)(A)(ii) (codified at 8 U.S.C. § 1375a(a)(5)(A)(ii)).

IMBRA requires the U.S. Department of State to mail to the beneficiary a copy of the U.S. petitioner’s visa petition form, which includes criminal background information, along with the instruction packet it mails about the visa application process.

²⁹ A waiver may still be granted if a series of strict criteria amounting to “extraordinary circumstances” is met (including that any violent criminal offense was committed while acting in self-defense).