



Promoting Justice for Women & Girls Worldwide

SUMMARY OF THE INTERNATIONAL MARRIAGE BROKER REGULATION ACT OF 2005 (IMBRA)*

Overview

On January 5, 2006, President Bush signed the “International Marriage Broker Regulation Act of 2005” (“IMBRA”) into law as part of the reauthorized “Violence Against Women Act” (“VAWA 2005”).¹ IMBRA was motivated by alarming evidence of a growing nationwide trend of abuse and exploitation of so-called “mail-order brides.” In an effort to prevent future tragedies, the new law imposes regulations on the IMB industry as well as mandates certain changes to the process by which an American 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). This summary highlights the main provisions of IMBRA. For further information, including answers to “Frequently Asked Questions,” please see additional materials at www.tahirih.org.

Obligations of International Marriage Brokers (Sections 833(d) and (e))

Marketing of Children Prohibited. IMBs may not provide personal contact information, photographs, or other information about anyone under the age of 18 to any individual or entity. (Section 833(d)(1))

Duty to Disclose Criminal and Marital History and Obtain Written Consent. Before an IMB may provide a foreign national client’s personal contact information to a United States client, the IMB must:

- (1) search sex offender public registries for information regarding the United States client;
- (2) collect certain criminal and marital background information through documentation or an attestation from the United States client;
- (3) provide to the foreign national client any records retrieved from the sex offender public registry search and the background information collected in her primary language;
- (4) provide to the foreign national client a government-prepared information pamphlet (see below) about the legal rights and resources available in the U.S. to immigrant victims of domestic violence and other crimes; and
- (5) obtain the foreign national client’s signed, written consent to the release of her information to the United States client. (Sections 833(d)(2) and (3))

Penalty for Misuse of Information. Any person who knowingly misuses any information obtained by an IMB under IMBRA (i.e., uses that information for any unauthorized purpose other than IMBRA’s required disclosures) is subject to a fine or imprisonment of not more than 1 year, or both, in addition to other possible penalties that may be imposed under federal or state law. (Sections 833(d)(3)(C))

Penalties for Other Violations/Nonpreemption. An IMB is subject to a civil penalty of \$5,000 - \$25,000 per violation or attempted violation of its obligations under IMBRA, and criminal penalties for not more than five years in prison. This is in addition to other possible penalties and remedies that may be provided for under federal or state law. (Sections 833(d)(5) and (6))

Definition of an International Marriage Broker. “International marriage broker” is defined as an entity (whether or not U.S.-based) that charges fees for providing matchmaking services or social referrals between U.S. citizens/permanent residents and foreign nationals. The definition also sets forth exceptions so as to exclude nonprofit religious or cultural matchmaking services, and dating services that do not match U.S. citizens/residents

¹ IMBRA is Subtitle D (Sections 831-834) of Title VIII in Public Law 109-162 (“The Violence Against Women and Department of Justice Reauthorization Act of 2005”).

with aliens as their principal business and that charge comparable rates and offer comparable services to all clients, regardless of gender or country of citizenship.

Informational Pamphlet about Legal Rights and Resources (Sections 833(a) and (b))

IMBRA requires the U.S. Department of Homeland Security (DHS), in consultation with the Departments of State (DOS) and Justice (DOJ) and nongovernmental organizations with specialized expertise, to develop a pamphlet for foreign fiancé(e)s and spouses about the K visa immigration process, the legal rights and resources available to immigrant victims of domestic violence and other crimes, the illegality of marriage fraud (i.e., knowingly entering a marriage solely to obtain an immigration benefit) and U.S. legal obligations regarding child support. The pamphlet will also include a warning concerning the potential use of K visas by U.S. citizens with a history of violence, whose acts may not have resulted in a criminal record; as well as a notification regarding IMBs' obligations to disclose U.S. clients' violent criminal records, with the further caution that the accuracy of those disclosures depends on the truthfulness of the U.S. client reporting the information.

The pamphlet will be translated by the government into several foreign languages and made available at U.S. consulates as well as on consular and DOS/DHS websites. The pamphlet will also be directly distributed to all K visa applicants (foreign fiancé(e)s and spouses), and made available to victim advocacy organizations and IMBs. IMBs must distribute this pamphlet to foreign national clients as part of the "disclosure and consent" procedure described above.

Changes in K (Fiancé(e)/Spouse) Visa Process (Sections 832(a); 833(a)(5)(A)(ii)-(iii); 833(b)-(c))

Criminal Background Information Disclosed to Foreign Fiancé(e) or Spouse. IMBRA requires U.S. citizens petitioning to sponsor K visas to disclose convictions for a list of violent crimes on the "I-129F" petition form that they file with DHS, including convictions for domestic violence and assault & battery (if it is in a domestic violence context), as well as convictions for elder abuse, child abuse or neglect, and stalking; and multiple (three or more) convictions for offenses related to alcohol/controlled substances.

DHS must provide to DOS a copy of the petitioner's I-129F petition form, together with any criminal background information (including information on protection orders) that DHS has gathered on the petitioner under existing authority. (The US government already conducts criminal background checks on all visa petitioners. IMBRA does not provide additional authority to conduct background checks.) DOS, in turn, must provide these materials to the foreign fiancé(e) or spouse. The U.S. consular officer conducting the K visa interview overseas must inform the foreign fiancé(e) or spouse that this information may not be complete, and ask her (1) whether an IMB facilitated her relationship with the petitioner and if so, which one and (2) whether the IMB complied with IMBRA by providing her with the required disclosures and information. (Sections 832(a), 833(a)(5), and 833(b)(1))

Limits Placed on How Many and How Often Fiancé(e) Visa Petitions May be Filed; Petitioners with Violent Criminal Records Barred from Serial Sponsorship. IMBRA limits a US petitioner's sponsorship of K I (fiancé(e)) visas to 2 total, with no less than 2 years between the filing of the last approved petition and the current petition. If it can be justified, a petitioner may seek a discretionary waiver of these limits from DHS. However, DHS cannot waive the limits if the U.S. petitioner has a record of violent criminal offenses, except in extraordinary circumstances such as where the U.S. petitioner is herself a domestic violence victim and the violent offenses she committed were in self-defense or certain other extenuating factors can be shown. (Section 832(a)(1))

Government Tracking of Serial K Visa Petitions. IMBRA creates a government database to track serial K visa petitions filed by the same U.S. petitioner and to notify the foreign fiancé(e) or spouse of prior K petitions. The

notification requirement is triggered after the petitioner has had two K petitions approved and files a third petition within 10 years of the date the first petition was filed. (Section 832(a)(2))

GAO Study and Report (Section 833(f))

The Government Accountability Office must conduct a study of IMBRA's impact on the K visa process, including an analysis of petitions denied, waivers requested of IMBRA's visa limits and grants/denials of those requests, petitions filed by persons with criminal records or a history of serial visa petitions. The study will also examine the IMB industry in the United States (including the extent of IMBs' compliance with IMBRA); the accuracy and completeness of information that IMBs obtain from their U.S. clients and that the U.S. government obtains from U.S. visa petitioners; the extent to which persons with a history of violence use IMBs and the K visa process; and the extent to which the government's criminal background checks are able to identify past instances of domestic violence. A report on the results of this study must be submitted to the House and Senate Judiciary Committees within 2 years after the date of IMBRA's enactment.

Effective Date (Sections 833(a)(6) and 833(d)(7))

Most of IMBRA took effect 60 days after enactment. The government was required to develop and begin distributing the informational pamphlet by 120 days after enactment, and IMBs have up to 30 days after the pamphlet is developed and initially distributed by the government to begin distributing the pamphlet themselves as part of the "disclosure and consent" procedure described above.

* Compiled by the Tahirih Justice Center (www.tahirih.org), which is a non-profit 501(c)(3) organization that works to protect immigrant women and girls seeking justice in the United States from gender-based violence through pro bono legal services and public policy advocacy. For more information, please contact justice@tahirih.org or call (703) 575-0070.