

COMPLIMENTARY COUNSEL

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“Islamic” marriage followed by application for fiancé visa

Problem: Individuals seeking to enter the U.S. as a result of marriage use a variety of different avenues to do so. One such scenario I’ve seen all too often within the Muslim community is individuals partaking in the Islamic marriage or Nikkah and assuming immigration authorities will not know and/or will not qualify such as a legal marriage. Thereafter, the individual attempts to apply for a fiancé visa from abroad and is soon denied.

Counsel: Both USCIS (the Department of Homeland Security) and the Department of State will consider a Nikkah to qualify as a legal marriage for immigration purposes. Applicants for a fiancé visa abroad will almost always be denied if they have already entered into the Nikkah contract, *even if they have not legally registered their marriage.* Furthermore, immigration officials have investigative authority and will almost always visit and/or inquire into the applicant’s neighborhood to ascertain whether the Nikkah was entered into. As such, it is wrong to assume that immigration will not find out about the Nikkah or that one can hide such information.

One should seek USCIS petition approval and apply for the fiancé visa *prior to* entering into either a Nikkah (“Islamic marriage”) or a legal marriage. After entering the U.S. on a K-1 visa, one may conduct both the Nikkah ceremony and register such marriage within the requisite 90 days of entry. If it is desired to have the Nikkah in the foreign country, the foreign national must apply for an immigrant visa using a spousal petition by his/her U.S. citizen or lawful permanent resident spouse and *not* a fiancé petition.