The International Visa Traveler©

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*Stay Informed *Analyze Trends *Read Tips & Suggestions *Avoid Pitfalls *Unite Faster

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Welcome to the Year 2008 Issue of The International Visa Traveler©!

Thank you for your interest in our newsletter. It's designed for American bachelor gentlemen who seek an international fiancée and bride from Latin America, Russia, Ukraine and The Philippines.

We want to present you with timely and informative pieces of news and developments concerning Fiancée and Spousal Visas and related issues. And we hope that this legal and practical information will ultimately assist you in the U.S. immigration process.

NEWS AND DEVELOPMENTS

SPECIAL ADVISORY: PRESIDENT BUSH SIGNS "INTERNATIONAL MARRIAGE BROKER REGULATION ACT OF 2005", WHICH IMPACTS BROKERS, FIANCEE & SPOUSAL VISA PETITIONERS AND BENEFICIARIES.

On January 05, 2006, President Bush signed the ***International Marriage Broker Regulation Act of 2005,*** as part of the Violence Against Women Act Reauthorization. Driven by a few unfortunate cases around the country of a foreign spouse who became a victim of domestic abuse, the new law requires all U.S. gentlemen who petition for a fiancée or spousal visa to provide more personal background information to Immigration Service and the State Department than ever before. It creates more restrictions in the process such the number of fiancée or spousal petitions one can file, and how quickly a gentleman can file some visa petitions.

The law also requires a U.S. gentleman who wishes to meet his future fiancée or spouse through an "International Marriage Broker" to first submit extensive personal background information to the broker agency. The broker must then share that information with a future lady fiancée or spouse who must consent before the couple can start a communication and relationship.

For the foreign ladies, the law is important because it tries to protect immigrant women by allowing them to review a potential gentleman suitor's background before starting a relationship. For the gentlemen, it means that they must be prepared to forego some privacy and offer some extensive background data. Perhaps, the best way to view this law is simply to acknowledge the obvious: in the long run, full disclosure is the best "relationship" policy.

INSIDE THIS ISSUE

Disclaimer: This Newsletter is intended only as an informational guide and not legal advice. Please always consult an attorney.

VISA NEWS ALERT: K-3 AND K-4 VISAS ARE NOW AVAILABLE UNDER "LIFE"' AMENDMENT REGULATIONS OF DECEMBER 21, 2000. THE NEW EXPANDED K VISA WILL LIKELY BECOME THE PREMIER METHOD BY WHICH U.S GENTLEMEN WILL SPONSOR THEIR FIANCEES AND WIVES AND THEIR MINOR CHILDREN ABROAD INTO THE U.S. IN APPROPRIATE CASES.

Immigration Service has issued long-awaited regulations implementing the new K-3 and K-4 Visas authorized under the LIFE Amendments of December 21, 2000. In essence, the regulations set forth the procedures now utilized to put into effect the new law which expanded the K Visa category to include all spouses and minor children of U.S. Citizens. Current applicants waiting for a pending relative petition qualify, as well as future applicants. Spouses also qualify for work authorization. This means that U.S. Citizen gentlemen who marry abroad in any country have another and quicker option to sponsor their spouses and minor children to the U.S. in certain cases where the spouse already has a non-immigrant visa for the U.S. The previous method was for the U.S. citizen gentleman to return home and file an I-130 Petition for Alien Relative which sometimes took 6-12 months or longer.

One notable exception may be countries which allow for "Direct Consular Filing" fast-track processing of spousal visa petitions anyway, such as right now for example, the U.S. Embassy in the country of Brazil. Thus, the new K Visa may not apply to those situations. However, the new K-Visa will affect other countries such as now Colombia and Peru and noticeably reduce the wait times for processing of visa requests from U.S. citizen gentlemen who marry foreign ladies in these other countries.

There are now four (4) K Visa Categories:

K-1: Visa for Fiancé(e)s of U.S. Citizens (90 Day)

K-2: Visa for Minor Children of K-1 Fiancé(e)s (90 Day)

K-3: Visa for Spouses of U.S. Citizens (10 Year)

K-4: Visa for Minor Children of K-3 Spouses (10 Year)

VISA NEWS, ISSUES AND TIPS

USA: Legacy INS Reports on Nat'l Visa Totals

In a Report to Congress on International Matchmaking Organizations dated March 1999, the former INS reported on national totals of visas as follows:

*More than 200 international matchmaking organizations operated in the United States in 1998, and the number is growing.

*These organizations bring together approximately 4,000 to 6,000 couples who marry or intend to and petition for immigration of the lady spouse to the U.S. This volume represents between 3 to 4 percent of the direct immigration of lady spouses to this country and only 0.4 percent of all immigration to the U.S.

NEW DIRECTOR CONFIRMED FOR USCIS

On December 27, 2005, the U.S. Senate confirmed the appointment by President Bush of Dr. Emilio T. Gonzalez as new Director of United States Citizenship and Immigration Services (USCIS).

Dr. Gonzalez brings a wealth of personal and professional experience to his post, where he will lead the world's largest immigration service with more than 15,000 Federal and contract employees. With his unique experience as an immigrant and with knowledge of national security issues, Dr. Gonzalez will lead new programs to improve customer service, enhance national security ad eliminate caseload backlogs.

Dr. Gonzalez is a 48 year old Cuban-American who served at the U.S. Embassies in El Salvador and Mexico, and in the White House National Security Council.

Strict Order of Documents for Fiancée Visa Interview

The U.S. Embassy, Consular section in Bogotá routinely mails out a notification packet to fiancées of American citizens who have successfully petitioned the Immigration Service for permission to apply for a fiancée visa. This packet includes a Strict Order of Documents for the Fiancée Visa which lists:

valid passport, three photographs in accordance with Immigration Service specifications, Baptism certificate, Birth certificate, divorce decree, Affidavit of Support, and evidence of legitimate relationship.

SPECIAL ALERT

"U.S. Embassy in Bogotá, Colombia ends Direct Consular Filing (DCF) for Resident Visas by Non-Resident of Colombia U.S. Citizens"

On July 01, 2003, the U.S. Embassy in Bogotá, Colombia ended Direct Consular Filing (DCF) for Resident Visas by Non-Resident of Colombia U.S. Citizens. All petitions must now be filed in the U.S. for processing. In the past, U.S. Citizens who visited Colombia briefly under a Colombian tourist visa ad married a lady from Colombia could directly file with the Embassy petitions to secure a resident visa for the spouse and any minor children.

Due to the volume of such petitions as well as stricter post 09-11 visa processing, the Embassy will no longer accept such filings unless the U.S. citizen can show that he is a resident of Colombia.

DCF enabled visa petitioners to enjoy expedited processing of a resident visa for their new spouse and any minor children, sometimes from 4 to 6 weeks or less. The new procedure will require filing for the K-3 Visa which is currently processing at 5 to 6 months.

THE PHILIPPINES

VISA FRAUD

The U.S. Embassy, Consular section in Manila reports the second highest number of visa fraud cases, following only the American Consulate in the Dominican Republic. The Philippine government for some time now has outlawed "mail order marriages". In addition, the US I-129F Fiancée Visa Petition carries with it two requirements which prevent a "mail order marriage":

*The couple must have met in person within two years of the visa petition. Photographs of the couple together in front of recognized locations preferably with date stamp are extremely vital.

*The lady fiancée must marry the gentleman within 90 days or return home.

The I-129F Petition for Fiancée Visa is intended for American citizens who legitimately show a genuine relationship and intention to marry with a foreign lady. Penalties under Section §1325(c) of the Immigration and Nationality Act of 1997 (as amended) for fraud conviction are severe: 5 years imprisonment or $250,000 fine or both.

AUTHORITY FOR K-1 FIANCEE VISA

The source of legal authority for the issuance of the K-1 Fiancé(e) Visa is found at: Immigration and Nationality Act, INA § 214 (8 U.S.C. 1184) and 8 CFR §214.2(k)

PERSONAL MEETING REQUIREMENT FOR K-1 FIANCEE VISA

One of the requirements for the K-1 fiancée visa under current immigration laws, INA §214(d) as amended by the Immigration Marriage Fraud Amendments of 1986, §3(a) is: a personal meeting between you and your spouse within the past two years of the date of the filing of your I-129F petition for fiancée visa.

The purpose of this requirement is to ensure that your fiancée relationship is sincere and genuine before the government issues the visa. However, the law in §214(d) also permits an exception to this requirement called a "waiver". The law authorizes the U.S. Attorney General to exercise discretion to grant this waiver in appropriate cases, but gives no specific guidelines.

As interpreted by present visa regulations, the personal meeting requirement may be waived upon proof that that compliance would:

1. result in "extreme hardship" to the petitioner

2. violate strict and long-established customs in the beneficiary's foreign culture or social practice. One example is a culture where marriages are traditionally arranged by the parents of the contracting parties and the prospective bride and groom are prohibited from meeting subsequent to the arrangement and before the wedding day. 8 CFR §214.2(k)(2). The petitioner must show however that all other traditional customs

Examples of the grounds for waiving the two year meeting requirement or extreme hardship to the petitioner from the Administrative Appeals Unit (AAU) of the Immigration Service are:

1. petitioner is on active military duty. Matter of [Name withheld], A70-223-209 (AAU Dec. 31, 1992)

2. medically proven anxiety disorder or panic disorder prohibiting travel. Matter of [Name withheld], A29-908-712 (AAU Dec. 31, 1992)

3. a combination of military duty precluding petitioner's extended leave, combined with civil unrest in beneficiary's country and petitioner's low income making it financially impossible for him to visit his fiancée's country or vice versa. Matter of [Name withheld], A71-653-401 (AAU July 16, 1992).

Two additional points:
1. The Immigration officer cannot automatically suspend a I-129F petition simply because the two year meeting requirement is not satisfied, but may give this considerable weight in determining if a bona fide marriage is intended. 9 FAM §41.81, Note 5.1.
2. A denial of a fiancée visa petition because the couple did not meet in person in the past two years does not prejudice their right to submit another subsequent petition that they have in fact met in person. 8 CFR §214.2(k)(2)

DENIAL OF FIANCE(E) VISA PETITION OR VISA: WHAT DO I DO?

If the Immigration Regional Service Center denies the I-129F Petition for Alien Fiancé(e), or the American Consulate denies the subject fiancé(e) visa, the petitioner has four (4) options:
1.Appeal: An appeal can be filed within 33 days of receipt of the denial decision using **Form I-290B** and submitting a government filing fee of $110.00. This appeal is filed with the Regional Service Center which issued the denial, then forwarded by them to the Administrative Appeals Office (AAO) in Washington, D.C. which made the denial decision. If the denial of the fiancé(e) takes place at the U.S. Consulate abroad, the appeal is filed directly with the AAO.
2.Motion to Reopen: This Motion argues that new facts have developed or arisen critical to the petition adjudication and is accompanied by signed Affidavits and/or other documentary evidence of the new facts. It is filed within 30 days of the denial decision with the Regional Service Center which issued the denial.
3.Motion to Reconsider: This Motion argues that the Regional Service Center made an incorrect application of law or INS policy to the petition in issuing the denial. It is filed within 30 days of the denial with the Regional Service Center which issued the denial.

Appeals and Motions to Reopen and reconsider are very rarely successful, perhaps in about 5% of the cases. Often, the better recourse is to file a new or different type of petition for another visa category.

4.Waiver of Excludability Option: This option is available to U.S. citizens and fiancées who are denied the visa at the American Consulate: the I-601 Waiver of Excludability. This is filed directly with the Consulate and requests that the Consular officials exercise discretion in the applicant's favor and set aside the visa denial, waive the fiancée's exclusion and allow her U.S. admission anyway.

As concerns the mechanics of securing the waiver, it is usually done at the time of the filing of the petition. You must submit documentary proof of things such as letters, reports and affidavits from employers, doctors and others about military service, medical conditions precluding travel, and other hardships preventing travel. Expect long delays in the processing of such requests in your petition, and careful scrutiny of the basis for your request for waiver.

This relief is usually quite difficult to secure. It requires that the U.S. citizen make a successful case that his continued separation from his fiancée and any prospect that he move to his fiancée's country to live both constitute an **"extreme hardship"** in his case. The kinds of factors which sometimes have proven pursuasive to the Consulate in the past are:

1. Minor children of the U.S. citizen who require special care, custody, schooling in the U.S. or who have special medical problems traveling abroad or immigration restrictions.
2. U.S. citizen's lack of foreign language skills of his fiancée's country, and general lack of comparable employment and living standards in the fiancée's country producing an irreparable and permanent diminution of the couple's lifestyle.
3. Special emergency medical problems and issues of close relatives of the U.S. citizen residing in the U.S.
4. Financial hardships and difficulties, compromises in ownership of critical real properties and other types of substantial investment, job and business losses in the U.S. for the U.S. citizen should he need to travel and live in his fiancée's country.
5. Excessive and undue costs to the U.S. citizen for travel and re-location to fiancée's country or for continued separation from fiancée.
6. Cogent and persuasive character reference letters from doctors, clergy, close family members and others of significant credibility attesting to the fiancée's character, and confirming the nature and severity of the emotional and psychological harm to the U.S. citizen of the continued separation from his fiancée

VISA HELP FOR U.S. CITIZENS IN COLOMBIA AND CITIZENS OF COLOMBIA

The U.S. Embassy, Bogotá, Colombia has recently updated and upgraded their website and telephone contact information.

http://www.usembassy.state.gov/bogota/

Central Reception for Visa Calls:
01-8000-12-32-32.

Please visit the Embassy website and call their telephone line for a wealth of free information about U.S. visas.

MY BRIDE'S FAMILY WANTS A VISA FOR THE U.S.: WHAT DO I DO?

NO FAST, EASY, INEXPENSIVE WAY TO SECURE VISAS FOR BRIDE'S FAMILY: Many gentlemen contact us with the question of what visas are available for the bride's family. The blunt and painful "short answer" is that there is no good way to accomplish this. Immigration rules greatly favor two things in the visa process: 1) close family relationships as opposed to distant ones, and 2) petitioner for family visas who are U.S. citizens rather than only U.S. legal residents. The basic problems with the family visa process for the bride is that she not yet a U.S. citizen, a process which will usually take up to 5 years for her. The other major problem is that family visas are limited to only four relatives: parents, children, spouses and siblings.
PERMANENT RESIDENT VISA: This type of visa allows the family immigrant to reside in the U.S. permanently and work and travel freely. The bride petitioner must first be a U.S. citizen and select a financial sponsor for the family immigrant. There is no quota waiting time for this type of visa if the petitioner is a U.S. citizen, but processing times nonetheless can take up to one year. If the bride is only a U.S. legal resident, she is still allowed to petition for a "preference relative", such as parents and children, but waiting times are long – up to 5 years.

TEMPORARY NON-IMMIGRANT VISA: This option is available to all visa applicants at the U.S. Consulate in their home country, regardless of the bride's status as U.S. citizen or legal resident. The three most common types of temporary non-immigrant visas are: 1) tourist visa for short stay visitations, 2) student visa for full time study at immigration-approved universities, and 3) work visa for employment of short duration with designated employers.

The basic issue with temporary non-immigrant visas is that the applicant must show sufficient ties to his or her home country in the nature of money and assets, employment, and ownership of property to satisfy the Consulate that the applicant will return home at the end of the visa period. At some U.S. Consulates, such waiting times for the visa interview alone are long – sometimes 6 months or longer.

MODEL'S VISA

VISIT THE U.S. FOR MODELING WORK AND EVENTS

Exceptionally qualified ladies in the fashion modeling industry may qualify for a Model's Visa. This visa allows a model to temporarily visit the United States to work or participate in modeling events.

Under U.S. immigration laws, there are potentially three methods to qualify for a model's visa: the **H-1B WORK VISA**, the **O-1 ALIEN VISA** and the **P-3 CULTURAL EVENT VISA:**

The H-1B work visa allows you to do modeling work in the U.S. for a designated employer for three years. This visa requires that you present: 1) qualifications as a distinguished fashion model in the industry, including titles in widely-regarded contests of first rank; and 2) a written job offer from a U.S. employer which has offered you the "prevailing wage" and filed a Labor Department "attestation".

The O-1 alien visa allows foreigners of extra-ordinary skills and talents to visit the U.S. for twelve months. This visa requires that you show: 1) A major international award or prize, 2) Other significant awards or prizes, or contribution to the field, or well-paid employment, and 3) a consultation report from a peer group, labor union or management organization verifying the alien's credentials and the benefits of the visit. See ***Matter of Ford Models***, EAC 92-171-50777 (AAU Oct. 16, 1992) which allowed the O-1 model's visa.

The P-3 cultural event visa is available to "artists and entertainers" who come to the U.S. to participate in a "culturally unique" event or program which furthers the art form. This requires that you show: 1) skills and talents which are authentic and supported by recognized credentials such as prizes or awards, published articles about your accomplishments, and letters from leaders explaining your performance, 2) your performance is "culturally unique" based on newspaper or other written review, and 3) a consultation report from a peer group, labor union or management organization verifying the alien's credentials and how the event is "culturally unique".

An example of a "culturally unique" event might be a model's trade show sponsored by an American company in the United States to showcase the beauty and modeling skills of the ladies of Cali, Colombia (the "Caleñas") widely-regarded, according to Fodor's travel literature, as "among the most exquisitely beautiful in all of Latin America."

WEBSITE IN SPANISH: www.VisaDeModelo.com

LEGAL ARTICLES OF INTEREST

CAN THE KIDS GO HOME?

GETTING YOUR COLOMBIAN FIANCEE OR BRIDE'S CHILDREN OUT OF THE COUNTRY

Even if you are able to secure a K-2 Fiancée Visa or K-4 Spousal Visa for your Colombian lady's children, getting the kids out of Colombia to allow them to enter the U.S. is another matter. American gentlemen simply assume, sometimes mistakenly, that the fiancée or marriage process with their lady automatically means that the kids "come along for the ride." Not necessarily so.

All Colombian minors leaving their country at border points, such as airports, can be stopped if they cannot show the permission of ***both parents*** to leave, including of course, the natural father. American gentlemen would not want to be in a position where they have married or become engaged to a Colombian lady, and then find out that her children cannot leave the country, and that their lady won't leave without the kids.

This situation illustrates the "Catch 22" scenario which sometimes can occur when U.S. immigration rules collide with local Colombian laws. The U.S. K-1 & K-2 Visas (or K-3 & K-4 Visas) for wife and child only allow the **ENTRY** or **INBOUND TRAVEL** of the visa holders into our country (i.e. "***U.S. immigration***"). It has no effect with regard to local Colombian rules of **EXIT** or **OUTBOUND TRAVEL** for Colombian nationals leaving their country (i.e. "***Colombian emigration***").

Continued: CAN THE KIDS GO HOME?

The Colombian government regulates the outflow of people across their borders and requires for example, valid passports, for their citizens for outbound travel. Additionally, an important family rule in Colombia is the absolute "right of paternity". In an effort to encourage countless absentee fathers to take back their children, the Colombian legislature passed a law to allow any father, even if he has never seen his child or much less supported him, the right to care for his child and to object to the child leaving the country without his permission.[1] In fact, there is a formal method to do this by using the services of the local Colombian Institute for Family Welfare (I.C.B.F.), similar to our family courts. In some cases, the upset father goes so far as to not only go to family institute or court, but to also file a formal written protest at the U.S. Embassy in Bogotá and with the local police.

The Colombian Department of Administrative Security (D.A.S.) is charged with the "emigration" responsibility to enforce these father-protection rules at border points such as airports. Thus, ***each time*** the child exits the country after a visit or entry until the child reaches majority age in Colombia defined as eighteen, D.A.S. can ask for written permission of the natural father in the form of an irrevocable notarized letter no older than 30-60 days before allowing the child to leave. The child's U.S. immigration status (e.g., resident, citizen) will usually not be relevant. Like all rules in Colombia however, the D.A.S. rules and practices seem to bend and change colors depending on the person charged with enforcing them, and their discretion.

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1. Colombian law apparently does not require that the father even be married to the mother, and thus marriage is not a prerequisite to the father's right to object.

So what do you do if you need the father's permission letter to allow the kids out of Colombia, and he refuses? There really are no clear solutions to this dilemma. Your options, as a practical matter, appear to be:

1. Negotiate a compromise solution with the father for his written permission in exchange for visitation rights or other offers. Sometimes negotiating through a third party intermediary whom your lady and the father both trust, such as a sister or uncle, works better. This road will take time and effort, and requires that everyone is thinking logically and acting rationally and not out of anger. Eventually over time in most cases, a compromise is reached.

2. Take the legal recourse of going to family institute or court, or at least start the process. Colombia's family institute or court offers a method whereby the wife can commence proceedings to order child support and secure guardianship: change the name of the child to the mother's last name, award full custody of the child to the mother, and overrule the objections of the father to the child leaving the country. But all this will take time, money and many hearings.

3. Re-approach D.A.S. officers after a time to request that they waive or relax their insistence on the father's permission letter. This is a dicey approach, but there have been situations where D.A.S. will eventually relent if there are enough efforts and tears from mom and the child.

4. A government social service's letter: If the father's whereabouts are unknown (either inside or outside the country), you may be able to secure a letter from the government social services office in the town where your bride/fiancée lives to the effect that: after a reasonable investigation, the child's father's whereabouts are not known. Usually, the D.A.S. will accept such as letter as proof that securing the father's permission is not reasonably possible, and thus allow the child to leave the country. End.

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MARRIAGE FRAUD & NATIONAL SECURITY

STATE DEPARTMENT IS NOW MORE SENSITIVE THAN EVER ABOUT MARRIAGE FRAUD AND HOW IT MAY ALLOW SUSPECTED TERRORISTS AN OPENING INTO THE COUNTRY

The U.S. State Department, and their investigative arm, Bureau of Diplomatic Security (BDS), working together with U.S. Immigration and Customs Enforcement (ICE), recently reported completion of a 19 month investigation of a marriage fraud ring in Seattle, WA USA.

According to the criminal indictment in federal court, the ring recruited and paid U.S. citizens and assisted in procuring fake engagements and marriages and securing fiancée and spousal visa for Vietnamese nationals.

State Department is thus more concerned now than ever before about the issue of how marriage fraud can denigrate the integrity of our immigration and visa system, and even implicate national security by allowing suspected terrorists into the USA.

Under current post 09-11 immigration and visa procedures, all visa petitioners and applicants are subject to intensified security and background checks at Consulate and Immigration Offices. Fiancée and spousal applications are closely scrutinized and tested for a documented “sincere and genuine relationship” before visa is issued.

Consulting an experienced attorney to ensure that a visa petition and application carefully and fully demonstrates sufficient proof of relationship and identity and background is thus greatly advantageous.

FOR MORE ON U.S. GOVERNMENT’S POSITION ON MARRIAGE FRAUD & NATIONAL SECURITY:

1. State Department:
http://www.state.gov/m/ds/rls/rm/39620.htm

2. ICE:
http://www.ice.gov/graphics/news/newsreleases/articles/marriagefraud120804.htm

CAN I MARRY MY LADY IN HER HOME COUNTRY AND THEN TRY A FIANCEE VISA?

”GETTING MARRIED” IN HER HOME COUNTRY, AND THEN ATTEMPTING A FIANCEE VISA IS A RISKY ROAD

The path of "getting married" in her home country, and then attempting the I-129F fiancée visa process, (or even trying this while the fiancée visa process is pending) is fraught with dangers.

The reason is that the I-129F process for fiancée visa is intended for "fiancés" (i.e. those "engaged to marry"), not married couples. Thus, obviously, a "lawful civil marriage" option in her home country is out.

Even a Catholic or other Church wedding which is not yet registered with local civil authorities is however usually notated in the marginal notes of her church Baptism or Birth Certificate, and this will be caught by Embassy when her final documents are reviewed before visa issuance, resulting in visa denial (which has happened before).

The fiancée visa application process at Consulate (and even sometimes the immigration officer Port of Entry interview) can and will ask the lady if she is a fiancée or already married. Thus, she may be forced into a misrepresentation if she wants to try and continue with the fiancée visa, which triggers serious penalties for fraud and misrepresentation such as permanent exclusion from the U.S.

Some couples who want the benefit of materializing their commitment to each other in front of her Mom and other family with a "ceremony" have done a simple "engagement party or social". Another possibility for Catholics is something called a "blessing of the rings" engagement ceremony which allows a couple the same purpose of ceremonializing their commitment to each other as an "engaged" couple, without it being an actual Church marriage or notated as such.

GOOD LUCK TO ALL LADIES & GENTLEMEN!

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