

LEGAL UPDATES

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U.S. Explains Changes to Visa Waiver Program

On January 21, 2016, the U.S. Department of Homeland Security and the Department of State provided new restrictions on the Visa Waiver Program (VWP) changes that Congress passed as part of the 2016 omnibus spending bill (H.R. 2029). The changes prohibit individuals who are dual citizens of both a VWP country and of Iran, Iraq, Sudan or Syria from using the VWP, as well as individuals who have traveled to Iran, Iraq, Sudan or Syria within the past five years.

Visitors Will Be Screened More Carefully

Visitors entering the U.S. through the VWP receive permission to travel faster than those who seek admission to the U.S. by applying for a B-1/B-2 tourist or business visitor visa, which requires an interview at a U.S. consulate. Every traveler who seeks to enter the U.S. using the VWP must apply and be approved through the Electronic System for Travel Authorization (ESTA). The Department of Homeland Security uses ESTA to determine visitor eligibility for the VWP by screening for counterterrorism activity and verifying other information from U.S. law enforcement and intelligence agencies.

Under the new restrictions:

All VWP travelers must possess a machine-readable passport.

Use of the VWP program is prohibited by individuals who are dual citizens of both a VWP country and also of Iran, Iraq, Sudan or Syria.

Individuals who have traveled to Iran, Iraq, Sudan, or Syria within the past five years are precluded from being admitted to the U.S. under the VWP.

Exceptions include members of the military of a VWP country and full-time employees of a VWP country's federal government who have traveled to Iran,

Iraq, Sudan or Syria on official government orders. These individuals should carry proof of their military or government service activity on any trips to the United States. Additional exceptions may be made on a case-by-case basis to people who have engaged in the excluded countries in specified activities such as journalism or NGO humanitarian work.

Enforcement Efforts

U.S. Customs and Border Protection (CBP), which is responsible for admitting travelers arriving from abroad, has indicated it will immediately begin revoking VWP authorization for a relatively small number of persons whom CBP knows are no longer eligible for travel under the VWP as dual nationals of a VWP country and one of the excluded countries. CBP has indicated that it will deny entry into the United States to individuals traveling on the VWP if they are found to be ineligible under the new changes. Individuals who have been admitted under the VWP but would otherwise be ineligible for the VWP under the new restrictions will not be affected for the current period of admission, but the restrictions will apply to future travel.

CBP indicates that a new ESTA online form will be released in late February that will include additional questions to address the new travel restrictions. Individuals who are denied ESTA authorization, and are thus ineligible for VWP travel, will need to apply for a B-1/B-2 visitor visa or other visa at a U.S. consulate abroad through the normal application and interview process. The Department of State has committed to provide adequate staffing to timely process visa applications on behalf of affected persons with imminent travel plans and to expedite applications for those with urgent business, medical or humanitarian travel needs.

In the future, the U.S. Department of State and the U.S. Department of Homeland Security may designate additional countries as “areas of concern” or state sponsors of terrorism, imposing similar restrictions on those dual citizens and travelers mentioned above.

What This Means to You

Travelers from VWP countries who plan to travel to the United States should assess their travel history and check their ESTA status prior to their travel. Travelers who have visited Iran, Iraq, Sudan or Syria within the last five years and dual citizens of those countries should not travel on the VWP and should instead apply for the B-1/B-2 visitor visa at a U.S. consulate abroad.

Please note that Canadians do not require visas and thus do not participate in the VWP. Therefore, these restrictions do not apply to Canadians traveling to the United States.

Travelers who have an urgent need to travel to the United States before late February, but who have had their ESTA application denied or revoked or will be otherwise ineligible to enter under the VWP,

may seek assistance through the CBP website or may contact the CBP Information Center. They may also request an expedited visa interview at a U.S. consulate due to an ESTA denial, attaching a copy of the ESTA denial email in the expedited visa request.

Contact Us

For more information about travel under the VWP, please contact Husch Blackwell immigration attorneys Toni Blackwood or Kelli Stout.