

Entering and Departing the United States – Tips for Travellers

For many years all foreign travellers entering the United States, whether with a valid visa or under the provisions of the visa waiver program, have been required to fill out and submit to U.S. immigration officials upon arrival at U.S. ports of entry one of two forms—the green I-94 W Arrival Departure record (for visa waiver travellers) or the white I-94 Arrival Departure record (for all other travellers).

When the traveller is admitted, the departure portion of both forms is then attached to his or her passport and is to be turned in when they depart the country. These forms are used to provide U.S. Customs and Border Protection (CBP) officials certain information about all persons entering and departing the United States.

The adoption of the Electronic System for Travel Authorization (ESTA), which became mandatory for all visa waiver travellers in January 2009, has allowed U.S. authorities to collect in advance from VWP travellers the same pertinent biographical, travel, and eligibility information requested on the I-94 W, removing the need to obtain this information from them upon their arrival in the U.S. In recognition of this fact, on May 20, 2010 U.S. Department of Homeland



Security Secretary Janet Napolitano announced that the green I-94W paper arrival/departure form will no longer be required in order to track the arrival and departure of these individuals.

The decision to eliminate the use of the form comes after a successful seven month pilot program eliminating the form for travellers from New Zealand arriving in Los Angeles on Air New Zealand flights from Auckland. CBP officials responsible for admitting travellers to the United States plan to eliminate the I-94W requirement at U.S. airports on a rolling basis over the next several months.

Travellers entering the United States on valid visas, including those from visa waiver countries, must continue to fill out and submit the white I-94 form upon their arrival at U.S. ports of entry and are responsible for retaining it in their passport

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US immigration

while they are in the country. When these travellers depart the United States they must return the Departure portion of the I-94 in order for their departure to be properly recorded. Typically this is done by handing the form over to the commercial air or sea carrier, or to U.S. immigration officials at the border for land departures.

Occasionally, departing travellers neglect to turn the departure portion of their form I-94 to the airline or sea carrier on which they depart the United States, only to discover it in their passports after their return to their residence abroad. If the traveller departed on an air or sea carrier their departure from the U.S. can be independently verified so it is not necessary for such travellers to take any steps to return the I-94. In this circumstance, however, it is a good idea to hold on to the departing flight boarding pass in case there is any concern at a subsequent entry about a previous timely departure.

However, travellers who depart the United States by land, private vessel, or private plane, and who were not able or neglected to turn over their I-94 forms face a different situation, in that their departure cannot be independently verified by CBP with an air or sea carrier. This can cause real difficulties when they next try to enter the United States, as CBP will have no record that they made a timely departure and could conclude that the traveller remained in the U.S. beyond his or her authorized stay. If that happens, the traveller could have his or her valid visa cancelled or be compelled to return to the foreign port of departure. The traveller

would also be enjoined thereafter from using the Visa Waiver Program for visa free entry to the U.S.

Travellers who depart by land through either Canada and Mexico and whose I-94 was not taken by U.S. immigration officials when they left must take affirmative steps to ensure that their timely departure is registered by CBP. Travellers who fail to turn in their I-94 forms at point of departure should upon discovering this fact send them directly to CBP, rather than to the U.S. embassy or consulate with jurisdiction over their place of residence, at the following U.S. address:

DHS-CBP SBU
1084 South Laurel Road
London, Kentucky 40744

The form should be accompanied by any available evidence that confirms departure from the United States, such as:

- original boarding passes that confirm departure from another country, such as Canada or Mexico, if the traveller flew home after departing the U.S. by land;
- photocopies of dated entry or departure stamps in a passport indicating entry to another country after departing the U.S.;
- dated payslips or employment vouchers confirming work in another country after departing the U.S.;
- dated bank records showing transactions, such as ATM withdrawals, in another country after leaving the U.S.;
- School records showing



attendance outside the U.S. after the date of departure;

- dated credit card receipts (with the card no. Deleted) for purchases made in another country after departure from the U.S. that indicate presence in that country.

The above documents should be accompanied by a letter explaining the traveller's situation. When original documents are sent, copies should be retained, as CBP does not return documents after processing.

Travellers who have returned a retained I-94 to the above office should retain a copy of the package sent to CBP and carry it with them on future entries to the U.S. in case the CBP officer at the port of entry has any questions about the date of a prior departure from the United States. Doing this will also give the admitting officer the opportunity to correct the electronic records if the CBP office in Kentucky has not already done so.

Travellers who make short trips to Canada, Mexico, or the United States in the course of a visit to the United States, should make certain they hold on to their I-94, which should only be turned in when the traveller leaves

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H1B Visa Program

The H-1B visa program is used by U.S. employers to employ foreign nationals in specialty occupations that require theoretical or technical expertise in a specialized field and require a bachelor's degree or its equivalent as a minimum requirement.

Examples of H-1B occupations include architects, engineers, computer programmers, accountants, doctors, and college professors.

Congress sets annual numerical limitations (caps) on H-1B visas, which control the number of workers that can be issued a visa in a given fiscal year to enter the United States. The current annual cap on the H-1B category is 65,000, and of that

amount 6,800 visas are set aside for nationals from Chile and Singapore, leaving 58,200 visas for foreign nationals from other countries.

An additional 20,000 H-1B visas are designated for foreign workers with a Master's or higher level degree from a U.S. academic institution.

As of May 14, 2010, approximately 19,000 H-1B cap-subject petitions had been received by the U.S. Citizenship and Immigration Services (USCIS) for FY2011. Approximately 8,100 petitions qualifying for the advanced degree cap exemption had been filed. USCIS will continue to accept both cap-subject petitions and advanced degree petitions until a sufficient number of H-1B petitions have been received to reach the statutory limits.

The National Foundation for American Policy (NFAP) recently published a research article on the future of the H-1B visa program. In the report, NFAP calls for greater availability of H-1B visas to ensure that the U.S. remains competitive in a global market. H-1B visas enable skilled foreign-born workers to enter and work under that nonimmigrant visa status in the U.S. for three years, enabling U.S. companies to recruit and hire from an international pool of talent.

NFAP comments that even when the economy is uncertain, employers still consistently need talented persons on an ongoing basis and the annual cap of 65,000 H-1B visas will most likely be met before the end of the fiscal year

Comprehensive Immigration Reform

On April 21, 2010, Senate Majority Leader Harry Reid (D-NV) and House Speaker Nancy Pelosi (D-CA) indicated that they might push up congressional debate on comprehensive immigration reform and make this reform the Obama Administration's next legislative priority.

This follows a report on March 18, 2010, in the Washington Post that Senators Charles Schumer (D-NY) and Lindsey Graham (R-SC) had presented their blueprint for immigration reform

legislation to President Obama. The Schumer-Graham blueprint rests on the following four pillars: ending illegal employment through biometric Social Security cards, enhancing border and interior enforcement, managing the flow of future immigration to correspond to economic realities and creating a tough but fair path toward legalization for the 11 million people currently in the United States without authorization.

On April 13, 2010, the Reform Immigration for America coalition ("RIFA") stated that at least 12 senators, including Senate Majority Leader Harry Reid (D-NV), have

publicly committed to move a comprehensive immigration reform bill forward in 2010. "I am committed to fixing our immigration system," and it is "one of the most important problems we need to address this year," Senator Reid said at a RIFA rally in Las Vegas. He added that there are currently 56 Democratic senators who would vote for an immigration overhaul package, and challenged Republicans to join them. "I know the Democrats in my caucus are eager to finally push immigration reform over the finish line, but we'll need help from the other side," he said.

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the United States to return to their place of residence abroad.

If a foreign visitor is unable to depart the United States in a timely manner due to events beyond his or her control, such as a delayed or cancelled flight, medical emergency requiring a doctor's care, etc., the overstay is not considered to have been unauthorized. However, on their next trip to the United States the traveller should bring proof of the overstay and the reasons for doing so to present to the CBP officer at the port of entry in order for the overstay to be "forgiven". In this regard, if the overstay was because of a delay or cancelled air flight, the traveller should obtain a letter from the airline affirming the delay, or in the alternative a copy of the cancelled boarding pass.

ICE plans to open more security units overseas

U.S. Immigration and Customs Enforcement (ICE) recently announced that the agency plans to expand its visa security units from 12 countries to 16 this year and an additional country next year. ICE has worked with the Department of State to identify high-risk posts that will receive visa security units. The program, intended to maximize the visa process as a counterterrorism tool, assigns experienced special agents to visa security units overseas to review visa applications, initiate investigations, and provide advice and training to consular officers.

The list of countries to be added has not been announced, but the Department of Homeland Security separately has identified 14 nations whose citizens underwent mandatory secondary screening for a temporary period after the Christmas Day bombing attempt: Afghanistan, Algeria, Cuba, Iran, Iraq, Lebanon, Libya, Nigeria, Pakistan, Saudi Arabia, Somalia, Sudan, Syria, and Yemen. Currently, ICE has visa security units in Canada, Egypt, Germany, Hong Kong, Indonesia, Jordan, Morocco, Pakistan, Philippines, Saudi Arabia, United Arab Emirates, and Venezuela.

USCIS Redesigns Permanent Resident Card

In its continuing effort to combat immigration fraud, the USCIS has redesigned the Permanent Resident Card (commonly known as the "Green Card").

The USCIS has utilized state-of-the-art technology to design Green Cards which prevent counterfeiting, obstruct tampering, and facilitate the quick and accurate authentication of the card.

In keeping with its name, the Green Card has been coloured green and contains enhanced features such as secure optical media to store biometrics for rapid and reliable identification of the card holder; holographic images; laser engraved fingerprints; and high resolution micro-images to make the card nearly impossible to reproduce if stolen. In addition, the Green Card contains Radio Frequency Identification (RFID) capability which will allow Customs and Border Protection (CBP) to read the card from a distance and to compare it immediately to file data.

U.S. Non-immigrant Visas Fees Increasing

On June 4 the fees charged by U.S. Embassies and Consulates for certain non-immigrant visa applications were increased. The standard Machine Readable Visa (MRV) fee required of all visa applicants (other than government officials or diplomats travelling on official business) has been increased from \$131 to \$140. At the same time, a new fee structure has also been adopted for persons presenting petition-based non immigrant visa applications ((H, L, O, P, Q, and R visas), who must pay \$150, applicants for E1/E2 treaty trader/investor visas, who must now pay \$390, and applicants for K visas, who must pay \$350. The Department of State has made these changes as part of an effort to ensure the unit cost for processing each individual visa category is properly reflected in the fees being collected.

Visa applicants in London will continue to be required to pay the above fees when they make their visa appointments using the Embassy's call center.

magrath LLP solicitors 66/67 Newman Street London W1T 3EQ
tel 020 7495 3003 fax 020 7317 6766 www.magrath.co.uk

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