

US Adds Seven Countries to the Visa Waiver Programme

On November 17 the Department of Homeland Security announced the expansion of the U.S. Visa Waiver Program (VWP) to include seven additional countries. The seven new VWP-eligible countries are the Czech Republic, Estonia, Hungary, the Republic of Korea, Latvia, Lithuania, and Slovakia.



The Visa Waiver Program allows citizens of participating countries to make routine tourist and business entries to the United States for visits of up to 90 days without first having to obtain a visa from a U.S. Embassy or Consulate. A country becomes eligible for inclusion in the VWP if it produces a biometric-readable "e-Passport" and if its citizens have had a consistently low rate of visa denials or overstays. In addition to the above countries, the following countries are designated VWP Countries:

Andorra, Austria, Australia, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, United Kingdom.

Although citizens of the seven newest VWP members are now eligible for visa-free entry to the U.S., in order to do so they must first have obtained authorization for travel by using the new Electronic Screening System for Travel Authorization (ESTA) that became operational last summer. The ESTA provides advance online clearance for Visa waiver travellers and may be submitted at any time prior to travelling to the U.S. While use of the ESTA system remains optional for most VWP travellers until January 12, 2009, its use is mandatory for citizens of the seven new VWP-eligible countries wishing to enter the U.S. without visas after November 17, 2008.

continued overleaf

US immigration

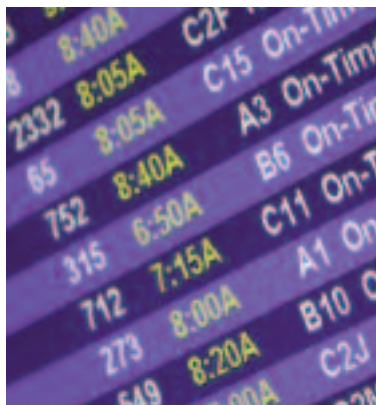
ESTA Becomes Mandatory for All Visa Waiver-Eligible Travellers on January 12, 2009

Use of the U.S. Electronic Screening System for Travel Authorization (ESTA) becomes mandatory for all persons seeking to enter the U.S. without visas under the Visa Waiver Program on January 12, 2009. From that date forward, travellers seeking to enter the U.S. without visas for routine tourist and business visits of less than 90 days duration must first log on to the ESTA website and complete and submit an online application requesting authorization to enter the U.S. without a visa. The application requests biographic data (name, date of birth, passport information) and eligibility information (communicable diseases, prior arrests, history of visa denial or revocation) similar to that now required of visa waiver travellers on the Form I-94W filled out upon arrival in the U.S. ESTA applications are checked against various law-enforcement data bases and security check lists. Most responses will be immediate, and will be one of the following:

Authorization Approved—the individual is eligible to travel to the U.S. without visa;

Authorization Pending—the individual is required to check back for final answer within 72 hours;

Travel not Authorized—the individual may not enter the U.S. without a visa and must arrange a visa appointment and be interviewed by a U.S. consular officer.



Most ESTA authorizations will be for multiple entries within a two year period. Frequent travellers who wish to avoid possible disruption to their travel plans should not wait until the last minute prior to January 12 to submit ESTA applications, or assume that authorization will be automatic. As previously noted, it can take up to 72 hours to obtain ESTA approval, and individuals who fail to obtain ESTA prior to travel can be denied boarding of U.S.-bound air or sea carriers. If a traveller is denied ESTA and requires a visa to enter the U.S. it can take two weeks or longer to schedule a visa interview.

If you or any of your employees has previously been denied a visa, had any difficulties in the past entering the U.S. under the VWP, or has other reason to believe that they may have problems obtaining an ESTA, a timely consult with counsel can help determine whether an ESTA approval will be forthcoming or whether a visa will be necessary.

The ESTA application can be accessed on the following website administered by the U.S. Customs and Border Protection division of the Department of Homeland Security: www.cbp.gov/esta

U.S. Immigration Services to Become Paperless

The U.S. Citizenship and Immigration Services (USCIS) division of the Department of Homeland Security has launched a five-year, \$500 million effort to convert all USCIS services from paper based to electronic. USCIS is the division of DHS that provides immigration and citizenship services to individuals. Current paper-based management systems are not keeping up with growing workloads and have helped contribute to lengthy delays in processing requests for immigration services. By moving to an entirely paperless system, USCIS expects to reduce backlogs and processing delays by at least 20% and possibly as much as 50%, according to sources working on the project.

With the U.S. government handling about 7 million applications for visas, citizenship, and approval to work in the U.S. each year, the need for an efficient system for processing these applications has become more pressing than ever before. Experts believe that the new paperless system currently under examination would allow government agencies, from the Border Patrol to the FBI to the Labor Department, to access immigration records and disseminate information faster and more accurately. Used in common with current initiatives to link digital fingerprint scans to unique identification numbers, the program will allow applicants to receive a lifetime digital record, eliminate the time-consuming need to file and re-

file paper forms, and will enhance the effectiveness of future efforts to reform U.S. immigration laws and regulations. IBM corporation will head an industry consortium charged with coming up with the most effective system for migrating to paperless USCIS operations.



Immediate Relative Immigrant Visas—How to Minimize Processing Delays

U.S. Immigration law places no numerical restrictions on the numbers of spouses, parents, and unmarried children under the age of 21 of U.S. citizens who may immigrate to the United States each year. As a result, once a Form I-130 petition filed by the qualifying U.S. citizen spouse or child with the U.S. Citizenship and Immigration Service (USCIS) has been approved, the beneficiary does not have to wait until a visa number is made available in order to receive his or her immigrant visa.

Although in theory this should enable the beneficiary spouse, child, or parent to join their loved one in the

U.S. within a reasonable period of time after the petition has been filed, in practice it can take several months or longer before the petition is approved, and a similar period of time thereafter until the final visa appointment is scheduled. For anxious family members these delays can be tortuous and stressful. While a certain amount of delay is inevitable, given USCIS' heavy workloads, there are things that you as the petitioner can do to minimize delays in processing your loved-ones immigrant visa applications.

It will be to your advantage to engage competent legal counsel from the onset to assist you in filing an immigrant visa petition and preparing for the beneficiary's immigrant visa interview. The procedures that must be followed by both USCIS and the Embassy are complicated, not that transparent, and difficult to interpret. Persons who file and work on their cases by themselves often suffer setbacks and unnecessary delays because of misunderstanding or confusion about the various documentary and legal requirements. Using the right counsel can save you time and reduce unnecessary stress.

Petitioners should:

1) File with USCIS in London, if possible

US citizens who reside in the United Kingdom and have done so for more than six months can file an initial petition Form I-130 for a spouse, child, or parent directly with the USCIS office in the London Embassy rather than having to file it through the Chicago lock-box maintained by

USCIS for most other immigrant visa petition filings. While this does not change the manner in which the petition is adjudicated it usually results in quicker processing and approval. A recent immediate relative petition filed with USCIS London resulted in approval within five weeks, whereas lock-box filings can take several months to be adjudicated. As long as the petitioner is residing in the UK when the petition is filed with USCIS, he or she can take advantage of this option.

2) Start at once to collect the documents required to process an immediate relative immigrant visa case to completion.

The initial petition request must be accompanied by evidence of the validity of the relationship on which the petition is based—birth certificates, marriage certificate, divorce certificates, passports—but petitioner and beneficiary should not wait to receive word of approval to start gathering the other documentation that will be required in order to obtain the immigrant visa. Of these, the most problematic is usually the Form I-864 Affidavit of Support, which is required to demonstrate to the consular officer who adjudicates the immigrant visa application that the beneficiary will not become a public charge in the United States. This form, completed by the petitioner, must be accompanied by complete US tax returns for the previous three years, along with evidence of employment (W-2s) or other

sources of income available to the petitioner. The key word here is complete—the entire return filed with the IRS in each of the three calendar years must be submitted. Petitioners who have not filed returns for any of the three preceding years should move quickly to file any missing returns to avoid delays in being able to submit the affidavit itself.

3) Identify and request required police certificate

Beneficiaries are required to obtain police clearance certificates from all countries they have resided in for one year or longer following their 16th birthday. Not every country makes these available, and it can sometimes take weeks or months to obtain one from some countries. Beneficiaries should inform counsel at the initial consultation of the places where they resided and the periods of time so that a determination can be made whether a police certificate is required and the necessary steps taken to obtain one. Doing this at the initial stages of the process will minimize the likelihood of a delay in visa issuance caused by a tardy or missing police certificate. Because some police certificates are only valid for six months, including the UK one, it is best not to submit the request until it is fairly certain the final visa appointment will take place within the next six months.

4) Be forthcoming with counsel at the initial consultation about past behaviour that could affect visa issuance.

Don't wait until your visa appointment has been scheduled and is imminent to advise counsel about that arrest or visa problem in the past. Immigrant visa issuance can be delayed or even denied if a beneficiary has a criminal record or has otherwise

violated U.S. immigrant law and regulations.

Depending on the circumstances, a beneficiary can benefit from a waiver of ineligibility under certain grounds of the law, but if your attorney doesn't know this prior to your appointment he or she may not have time to prepare your case to the best possible advantage, including the submission of a possible waiver request. The immigrant officer in USCIS and the consular officer at the embassy will both have access to a great deal of information about immigrant visa beneficiaries—don't assume that they will not be aware of any problem you may have had, even when it took place some years back.

5) Don't inform the embassy that you have all the required documents and are ready to have your final appointment until you are truly ready to immigrate.

The Embassy will not take final steps to schedule the beneficiary's visa appointment until they have received confirmation from the beneficiary that he or she has obtained all the required documents and is ready to immigrate. If you are not yet ready to relocate, consider postponing requesting a final appointment until you are. In addition, the petitioner must have moved back to the U.S. or be ready to do so by the time the beneficiary's visa appointment has been scheduled in order for the beneficiary to receive the immigrant visa. Otherwise, the consul could turn down the visa pending the receipt of additional evidence demonstrating that the petitioner resides in the US or is about to. Keep in mind, however, that an approved petition only remains valid for one year. Failure to obtain an immigrant visa during that year will cause the petition to lapse and will require a new one to be filed.