

Crackdown on Business Travelers from Visa Waiver Countries

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The Visa Waiver Program (“VWP”) allows citizens of 38 countries to travel to the U.S. for business or pleasure without having to obtain a formal visa by obtaining a pre-clearance known as Electronic System of Travel Authorization (“ESTA”). The ESTA registration is valid for two years and allows stays of up to 90 days per visit. Approximately 20 million visitors a year participate through this program. DHS automatically screens all ESTA information against numerous U.S. law enforcement and counterterrorism databases, as well as the INTERPOL databases. DHS recently announced that it will vet ESTA data on a daily basis to ensure that it is taking advantage of the latest law enforcement and intelligence information about a specific traveler.

The Trump administration has also started to crack down on visitors who overstay their 90 day period covered by the program. It will evaluate the countries that have high rate of overstay (2% or higher), and launch a public awareness campaign on consequences of overstays. DHS reports that only four countries so far will be required to conduct this education campaign: Greece, Hungary, Portugal and San Marino. Presently, visitors who violate the 90-day rule often have their ESTA status revoked. Another possible consequence may be that a particular country could temporarily be taken out of the VWP program. It is unclear what additional consequences may result from high rate of overstay to the individual traveler or the visa waiver country.

To help travelers comply with the 90-day rule and prevent them from overstaying, Customs Border Protection’s (CBP) has launched a new program. Travelers now can enter their name and passport information on CBP’s website under the tab “View Compliance” and be able to view how many days they can remain lawfully in the U.S. In addition, CBP will also send an email reminder to travelers in the U.S. 10 days before the expiration period of lawful admission. The email will be sent from: Staycompliance-donotreply@cbp.dhs.gov. If the foreign national overstays, s/he should also expect an email regarding their potential overstay violation.

CBP also announced that it will gradually expand the email notification program to other classes of temporary admission. We will continue to update you as CBP adds other visa classes to their “View Compliance” tab.

Given that the DHS and Congress are scrutinizing VWP, if you are a national of the current 38 participating countries, this can lead to changes that can affect your future travel to the U.S. In addition, if you utilize this method of travel to the U.S., it appears that the government, at the very least, will review specific data about your travel to and from the U.S.

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