

Considerations for Foreign Travelers to the U.S. Under the New Administration

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Travel to the United States, with its new immigration enforcement-minded administration, will require foreign travelers to be even more aware of the rules governing border protection, and take advantage of the travel programs still available to ease the inspections when entering the United States. This article discusses two mandatory programs that still operate and are not subject to the suspended January 27 executive order (EO) titled, "Protecting the Nation from Foreign Terrorist Entry into the United States." **Electronic Visa Update System (EVUS)** This online system is solely for nationals of China who hold a 10-year B-1/B-2, B1 (business), or B-2 (tourist) visa in a People's Republic of China-issued passport. They must now enroll in EVUS to travel to the United States and be admitted. This program took effect November 29, 2016. Travelers subject to the EVUS requirements who lack the valid enrollment will be unable to obtain a boarding pass or enter through a land port of entry. EVUS enrollment is *not* required of travelers using travel documents other than a People's Republic of China-issued passport. Travelers using a Hong Kong SAR, Macau SAR, or Taiwan passport may continue to travel to the United States without an EVUS enrollment. Employers should advise future business visitors from China that EVUS enrollment is mandatory. Employers can add this advisory to their internal website or human resources pages on EVUS. Attorneys with clients from China should advise them of the EVUS enrollment requirement in all correspondence. **Enrolling** To enroll, travelers will need their People's Republic of China passport with a maximum validity (10-year) B-1/B-2, B-1, or B-2 visa, and internet access. The enrollment questions are basic and request biographical, employment, emergency contact, and traveler eligibility information. There is no photo or biometrics requirement, and all travelers regardless of age must complete the EVUS enrollment. The enrollment questions are in English or Mandarin, and the enrollment can be done by a third party on behalf of the traveler as long as the responses, which must be in English, are truthful and accurate. The enrollment can be completed within minutes after submission but some responses can take up to 72 hours. The traveler cannot make corrections on the enrollment form and should just begin a new enrollment to correct any error. Updates of job or address information can be made on the EVUS system without a new enrollment. It is worth noting that, as of November 29, 2016,

airlines receive EVUS information through their internal networks and will *not* provide a boarding pass to a traveler who has a maximum validity (10-year) B-1/B-2, B-1, or B-2 visa in a People's Republic of China-issued passport who does *not* have a valid EVUS enrollment recorded in their system. Furthermore, travelers with People's Republic of China-issued passports residing outside China but traveling to the United States, will need to enroll in EVUS prior to travel to the United States. Thus, travelers from Canada using People's Republic of China-issued passports must enroll in EVUS when traveling into the United States, even if driving into the country. It is prudent to enroll well in advance of any travel plans and certainly at least one week before departing to the United States. EVUS enrollment is free and valid for two years or until the traveler's visa or passport expires, whichever comes first. When enrollment expires, travelers must update their information before traveling to the United States again. **Resources**

- For more information, and to enroll, travelers can visit <https://www.cbp.gov/evus>. The platform is mobile friendly.
- An EVUS call center (1-202-325-0180) staffed with Mandarin speakers is available 24 hours a day, seven days a week, but closed on U.S. federal holidays.
- Questions can also be addressed to evus@cbp.dhs.gov. This is not a U.S. Department of State system and as such, U.S. consulates cannot resolve enrollment issues or delays.
- The U.S. Customs and Border Protection (CBP) is the U.S. government agency responsible for EVUS and can assist with enrollment questions.

Electronic System for Travel Authorization (ESTA) This automated system determines the eligibility of travelers to the United States under the Visa Waiver Program (VWP). The VWP allows travelers from 38 participating countries (for list, see <https://travel.state.gov/content/visas/en/visit/visa-waiver-program.html>) to travel to the United States for business or pleasure for 90 days or less without a visa stamp when arriving by plane or cruise ship. To use ESTA, travelers must have an e-Passport (an enhanced secure passport with an embedded electronic chip). ESTA adds a layer of security that allows the U.S. Department of Homeland Security (DHS) to determine in advance of travel, whether an individual is eligible to travel to the United States under the VWP and whether such travel poses a law enforcement or security risk. Thus, answering the ESTA questions accurately and truthfully is critical. Travelers simply planning to transit through the United States en route to another country must complete an authorization via ESTA. Employers/attorneys should identify their employees/clients who hold dual nationality with one of the 38 ESTA countries and one of the seven countries specified in the suspended EO (Iran, Iraq, Libya, Somalia, Sudan, Syria).

Employers/attorneys should provide advisories on travel into the United States on a valid passport from a non-barred country and a participating ESTA country. Further, there are currently no ESTA requirements at U.S. land border ports of entry, but the CBP does require completion of a paper I-94W and a \$6 processing fee. ESTA authorization does *not* guarantee entry into the United States. The CBP officers at airport inspections or at land ports of entry determine whether a traveler can be

admitted into the United States. If the ESTA application is denied, the traveler may need to apply for a B-1 (business) or B-2 (tourist) visa, or B-1/B-2 visa from the U.S. Consulate in their native or home country prior to travel to the United States. For this reason, the ESTA application should be completed well before travel plans are made and tickets purchased. A new travel authorization through ESTA is required when: the traveler is issued a new passport, changes his or her name, or changes his or her gender; the traveler's country of citizenship changes; or the circumstances underlying the traveler's previous responses to any of the ESTA application questions requiring a "yes" or "no" response have changed. Nationals of the 38 VWP eligible countries who have been in Iraq, Syria, Libya, Somalia, Yemen, Iran, or Sudan (the countries listed in the suspended EO) at any time on or after March 1, 2011 are no longer eligible to use the VWP to enter the United States regardless of whether their ESTA applications are still valid. They must now apply for a B visa stamp to travel to the United States. These restrictions do not apply to VWP travelers whose presence in Iraq, Syria, Iran, Sudan, Libya, Somalia, or Yemen was to perform military service in the armed forces of a program country, or to carry out official duties as a full-time employee of the government of a program country. It is recommended that such travelers who have traveled to the seven countries listed above for military or official purposes bring with them appropriate documentation when traveling through a U.S. port of entry on the VWP program. **Applying** The ESTA online application collects biographical VWP eligibility information. To ensure successful processing, ESTA applications should be submitted when travel is planned, and even before airline tickets are purchased. ESTA is accessible at <http://esta.cbp.dhs.gov>. Third parties can complete the ESTA application on behalf of the traveler, and up to 50 travelers at a time. The ESTA application includes questions regarding communicable diseases, arrests and convictions for certain crimes, and past history of visa revocations or deportations. Positive answers to these questions will render the traveler ineligible to use the VWP to enter the United States, and will require the traveler to apply for a B visa stamp from a U.S. Consulate. ESTA will typically respond within minutes of submission with one of three possible responses: 1) *Authorization Approved*; 2) *Travel Not Authorized* requiring the traveler to apply for the B visa; or 3) *Authorization Pending* requiring the traveler to check within 72 hours for a final response. The ESTA system provides no email notifications. Note that there is a total \$14 ESTA fee comprised of the \$4 processing charge and a \$10 authorization charge when the application is approved. Payment is by credit or debit card only. The name on the card need not match the name of the traveler on the ESTA application. **Conclusion** It is always prudent to consult with an immigration attorney before choosing and enrolling in a program to use to travel to the United States, or if you experience any difficulties or rejections during the enrollment process. Because additional executive orders may be issued in the near future, seeking to curb travel into the United States, it is especially wise to consult with an immigration attorney and review the CBP website for guidance. There are additional voluntary "trusted traveler" programs designed to ease foreign travel to the United States, while ensuring national security and safety at the land and sea ports of entry. Information on these programs, including Global Entry, NEXUS, and Secure Electronic Network for Travelers Rapid Inspection (SENTRI), can be found on the CBP website.

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