

Pitfalls of ESTA

By, Tahmina Watson, Immigration Attorney

The Electronic System for Travel Authorization (ESTA) was established in 2009 to screen Visa Waiver Program (VWP) applicants before allowing them to travel to the United States. These prospective travelers are required to demonstrate their eligibility for the Visa Waiver Program by applying for travel authorization via ESTA prior to boarding a plane or vessel bound for the US. Through ESTA, the US government compares the applicant's personal information against various databases in order to determine whether there is a law enforcement or security reason to deem that person ineligible to travel to the US under the VWP. ESTA denials result in a notice to the applicant that they may not enter the US under the VWP, although the traveler may still be eligible to enter on a non-immigrant visa. However, ESTA approval is not a guarantee of admission into the US, as travelers must (again) establish eligibility during inspection by a government official at the US port of entry.

The ESTA process is not complicated, and the form is relatively easy to complete online. For those computer literate, it is generally self-explanatory. However, for those who are not, various issues may arise.

The ESTA online form is meant to be completed by the applicant. However, in practice, travel agents may be helping their customers to fill out the form, and they are failing to explain the ESTA program and its constraints. Moreover, it appears that travel agents are writing letters to their customers which may actually contain incorrect information, intentional or not, with regard to the ESTA validation period. It is important to understand that while ESTA approval is valid for two years, the actual permitted time in the US on the Visa Waiver Program is just 90 days.

From a recent client, I learned that she believed that the validation period of ESTA was indeed the same as the time she would be permitted to remain in the US. In other words, she thought that she had been authorized to remain in the US for up to two years. For this reason, she overstayed her visa waiver, as she didn't really understand that the stamp in her passport was the ruling factor. She relied on a letter from her travel agent, which contained this misinformation.

Not surprisingly, a simple trip to Canada turned into a small nightmare for her. Since she had overstayed her visa waiver, she was refused re-entry to the US and had to return to her home country. She will not be able to travel into the US very easily anymore.

While it is true that it was her responsibility to know the validity period of her visa in the US, and perhaps she should have understood the difference between ESTA and the Visa Waiver Program, it cannot be denied that such vulnerable people may be exploited. The travel agent had no problem taking money from this client and extending the ticket for another three months!

I would encourage travel agency governing bodies to impose responsibility on agents to ensure they do not take advantage of people like my client, and that they read the rules themselves before giving incorrect legal advice and jeopardizing the possibilities of re-entry for someone who would otherwise be eligible to return to the US.

Travelers themselves must be aware of the issue, and wary of relying on legal advice from travel agents. If you or your loved one is traveling to the US on the Visa Waiver Program, please be sure to check the ESTA rules!

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