

VISA WAIVER PROGRAM CHANGES IMPLEMENTED

By Kathleen Campbell Walker¹

On January 21, 2016, the U.S. Department of State [announced](#) that the changes made to the [Visa Waiver Program](#) (VWP) under the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 (Act) would begin. This Act removed certain individuals from VWP eligibility. They include:

- Nationals of VWP qualifying countries who have traveled to or been present in Iran, Iraq, Sudan, or Syria on or after March 1, 2011 (with limited exceptions for travel for diplomatic or military purposes in the service of a VWP country).
- Nationals of VWP countries who are also nationals of Iran, Iraq, Sudan, or Syria.

In reviewing how to implement the required changes of the Act, the U.S. found that approximately 16,000 individuals with Electronic System for Travel Authorization ([ESTA](#)) clearances (required for VWP participation) have dual nationality as to the above-listed countries. In the next 24-48 hours, emails will supposedly be sent to these individuals revoking their ESTA clearances. Most of these nationals came from the following countries: Germany, France, United Kingdom (UK), Sweden, and Australia. For those who need a U.S. visa for urgent business, medical, or humanitarian travel to the U.S., U.S. embassies and consulates will be prepared apparently to process applications on an expedited basis. In addition, review is ongoing whether a future waiver option of the visa requirement may be made available to these individuals.

In addition, approximately 1,600 individuals with ESTA clearances were identified as having traveled to the listed countries of concern: Iran, Iraq, Sudan, and Syria. The ESTA clearances of these individuals will not be automatically revoked. Instead, U.S. Customs and Border Protection (CBP) will wait until those individuals arrive at U.S. ports of entry (POE) to determine whether they will qualify for a possible waiver of the visa requirement, which is a case-by-case determination. The individuals who might qualify for a potential waiver of the visa requirement imposed are:

- Those who traveled to Iran, Iraq, Sudan, or Syria on behalf of international organizations, regional organizations, and sub-national governments on official duty;
- Those who traveled to Iran, Iraq, Sudan, or Syria on behalf of a humanitarian NGO on official duty;
- Those who traveled to Iran, Iraq, Sudan, or Syria as a journalist for reporting purposes;
- Those who traveled to Iran for legitimate business-related purposes following the conclusion of the Joint Comprehensive Plan of Action (July 14, 2015); and
- Those who traveled to Iraq for legitimate business-related purposes.

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Thus, it is extremely important for these individuals to carry documentation with them as to their prior travel to these countries of interest to support their argument for admission without a visa, if they wish to travel to the U.S. without applying for a U.S. visa.

In addition, an updated ESTA application with additional questions should be released in late February of 2016 to address exceptions for diplomatic and military related travel contained in the Act. Please contact the Immigration practice group members below for more information: kwalker@dykema.com, jaldrich@dykema.com, and hfrayre@dykema.com.