



## U.S. Government Implements Limitations on the Visa Waiver Program

The United States has begun implementing changes to the Visa Waiver Program (VWP) that restrict usage of the program to dual nationals of and travelers to Iran, Iraq, Sudan, or Syria. Effective January 21, 2016, travelers in either of the following categories are no longer eligible to travel or be admitted to the United States under the VWP: nationals of **VWP countries** who have traveled to or been present in Iran, Iraq, Sudan, or Syria on or after March 1, 2011, or nationals of VWP countries who are also nationals of Iran, Iraq, Sudan, or Syria. Those individuals subject to the new VWP restrictions who seek to enter the U.S. are now required to apply for a visitor visa at a U.S. embassy or consulate.

By way of background, the VWP allows nationals of certain pre-approved countries to enter the U.S. for business or pleasure without first obtaining a visitor visa. Individuals seeking entry to the U.S. under the VWP must apply for approval with the U.S. Customs and Border Protection by completing an Electronic System for Travel Authorization (ESTA) **application**.

Although Iran, Iraq, Sudan, or Syria have never been designated as VWP participating countries, individuals who possess dual citizenship with one of these countries and with a VWP country are subject to these program restrictions. Dual nationals of these countries must apply for a visa to enter the U.S. even if they have not traveled to any of the listed countries since 2011.

Travelers who currently hold an ESTA and who previously indicated holding dual nationality with one of these four countries will have their current ESTAs revoked. Since ESTA only needs to be valid upon admission to the U.S., an individual affected by the new rule currently in the U.S. may remain through their date of admission. However, the individual must apply for a U.S. visa prior to the next trip to the U.S. Current ESTA holders can check the status of their ESTA application on the U.S. Customs and Border Protection's **website**.

For individuals who traveled to one of the listed countries on or after March 1, 2011, an exemption from the VWP travel restriction may be available if the individual traveled to one of these countries to perform military service on behalf of a VWP country, or to carry out official duties as a full-time employee of the government of a VWP country.

Further, the Department of State may grant a waiver of these restrictions if it determines that such a waiver is in the law enforcement or national security interests of the U.S. Such waivers will be granted on a case-by-case basis. The categories of travelers who may be eligible for a waiver include: individuals who traveled to Iran, Iraq, Sudan or Syria on behalf of international organizations, regional organizations, and sub-national governments on official duty; individuals who traveled to Iran, Iraq, Sudan or Syria on behalf of a humanitarian NGO on official duty; individuals who traveled to Iran, Iraq, Sudan or Syria as a journalist for reporting purposes; individuals who traveled to Iran for legitimate business-related purposes following the conclusion of the Joint Comprehensive Plan of Action (July 14, 2015); and individuals who have traveled to Iraq for legitimate business-related purposes.

Importantly, the exemptions and exceptions listed above do not apply to the dual national restriction.

Lastly, the new VWP restrictions do not apply to Canadian citizens, including those who have dual nationality with one of the listed countries, because Canadian citizens are visa exempt and are not participants in the VWP.

The Department of State reports that U.S. embassies and consulates are prepared to process nonimmigrant visa applications and to expedite visa interview appointments for those with urgent business, medical, or humanitarian travel needs. However, travelers to the U.S. who are now required to apply for a visa are advised to do so well ahead of their travel date, as they may experience additional security checks and processing delays.

### [New Passport Requirements](#)

Beginning on April 1, 2016, all VWP applicants must be in possession of machine-readable passports. All

passports must be electronic and fraud resistant, and must contain relevant biographic and biometric information. These passport requirements apply only to travelers under the VWP. Foreign nationals who have a U.S. visa in their passport are not required to comply with these revised passport requirements.

If you have any questions, please contact the attorney at Pryor Cashman with whom you work.



**Colleen Caden**  
*Practice Chair*  
212-326-0147  
[ccaden@pryorcashman.com](mailto:ccaden@pryorcashman.com)



**Avram Morell**  
*Partner*  
212-326-0489  
[amorell@pryorcashman.com](mailto:amorell@pryorcashman.com)



**Alice Stock**  
*Partner*  
212-326-0480  
[astock@pryorcashman.com](mailto:astock@pryorcashman.com)



**Michael Cruse**  
*Counsel*  
212-326-0127  
[mcruse@pryorcashman.com](mailto:mcruse@pryorcashman.com)



**Dina Kleyman**  
*Associate*  
212-326-0123  
[dkleyman@pryorcashman.com](mailto:dkleyman@pryorcashman.com)



**Yamilet Echeverria**  
*Associate*  
212-326-0451  
[yecheverria@pryorcashman.com](mailto:yecheverria@pryorcashman.com)

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