



**CHANGES TO VISA WAIVER PROGRAM: TRAVELERS TO AND NATIONALS
OF IRAN, IRAQ, SUDAN OR SYRIA ARE NOW INELIGIBLE**

On Thursday January 21, 2016 the U.S. government began implementing significant changes to the Visa Waiver Program under the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 that was signed into law this past December. These changes will affect individuals who have traveled to Iran, Iraq, Sudan and Syria since March 1, 2011, or are nationals of Iran, Iraq, Sudan and Syria.

Individuals Who Have Traveled to Iran, Iraq, Sudan, and Syria

The new restrictions exclude from participation in the Visa Waiver Program (VWP) citizens of the 38 VWP countries who have traveled to Iran, Iraq, Sudan or Syria at any time since March 1, 2011, though in some cases a waiver may be available.

Waivers may be available on a case-by-case basis for individuals whose travel meets one of the following classifications:

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

VWP participants who have traveled to Iran, Iraq, Sudan or Syria will not have their Electronic System for Travel Authorizations (ESTA) clearances automatically revoked; however, upon arrival at U.S. ports of entry (POE) the immigration inspector will review their qualifications to determine eligibility for a waiver from having their Visa Waiver eligibility cancelled. Due to the uncertainty surrounding the POE “waiver” process, the CBP recommends that those who have traveled to these countries schedule a U.S. visitor visa interview at a U.S. Consulate abroad, prior to travel. Obtaining a visa in advance of travel should avoid being refused boarding of a plane to the U.S.

Nationals of Iran, Iraq, Sudan, and Syria

Nationals of Iran, Iraq, Sudan, and Syria are also now officially ineligible for travel to the United States under the Visa Waiver Program, even if they are citizens of a country that participates in the program. This restriction applies to individuals with “dual citizenship”, such as a French citizen who also has Iranian nationality who will now not qualify for visa waiver travel under the new restrictions. Nationality is governed by each individual country’s laws on citizenship and nationality. Accordingly, the determination of whether an individual is a national of Iran, Iraq, Sudan or Syria will be made based on the laws of those countries. Nationality is broader than citizenship, so it is possible to be a national of a country without being a citizen of that country. Applicants who are unsure of their nationality or status

with respect to one of these countries should contact immigration counsel in order to evaluate continued eligibility under the Visa Waiver Program.

Travelers who currently have valid ESTAs and who have previously indicated holding dual nationality with either Iran, Iraq, Sudan, or Syria on their ESTA applications will have their current ESTAs revoked and the Department of Homeland Security (DHS) will be sending emails to those individuals to notify them of the revocation of their ESTA clearance and inability to travel to the U.S. under the VWP.

Individuals who have traveled to Iran, Iraq, Sudan, or Syria or hold dual nationality with any of the four countries may still be able to travel to the U.S., but not under the VWP unless a waiver is available. Affected travelers should prepare weeks in advance and apply for a B-1/B-2 Business or Tourist visa, or another applicable visa, at a U.S. embassy or consulate abroad before travelling to the U.S. This visa application process typically requires an in-person visa interview and background checks. Current ESTA holders are encouraged to check to their ESTA status before any upcoming travel to confirm continuing eligibility for visa-free travel.

As a reminder, Canadian citizens are visa exempt and are not participants in the Visa Waiver Program. Accordingly, these new restrictions do not apply to Canadian citizens who have dual nationality in one of the four prohibited countries. Although not disqualified based on dual nationality, Canadian citizens who hold dual citizenship or have traveled to Iran, Iraq, Sudan or Syria may experience additional questioning and delays during immigration inspection.

Updated guidance on the implementation of the new ESTA program is expected to be published sometime in the next month and Foster will continue to monitor changes impacting eligibility for the Visa Waiver Program and will make additional information available in future Immigration Updates[®] and on our firm's website at www.fosterglobal.com.