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flash Alert

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**United States –
Implementation of
Statutory Changes to U.S.
Visa Waiver Program**
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Significant changes to the Visa Waiver Program were included in an omnibus spending bill (H.R.2029)¹ passed by the U.S. Congress on December 18, 2015. These amendments entitled "Terrorist Travel Prevention and Visa Waiver Program Reform," introduce new restrictions on travel into the United States. The Visa Waiver Program (VWP) allows citizens of 38 countries to travel to the United States for business and tourism for up to 90 days without a visa.

Why This Matters

This law places new restrictions on the VWP. As an example, in cases where an individual falls within one of the below-noted restrictions, while he/she would not be prohibited from coming to the United States, the individual would have to apply for a B1/B2 visitor's visa, whereas under prior rules, applying for a B1/B2 visitor's visa was not necessary.

These and other constraints introduced by the amendments should be noted by global mobility professionals, immigration advisers, and those traveling to the United States under the VWP but now included in these restricted categories. Should a traveler not be in compliance, he/she could be prevented from travelling and/or stopped at the port of entry.

Background

The VWP permits individuals of certain pre-approved countries to enter the U.S. without first obtaining a visitor visa (B-1/B-2) while overseas. Individuals seeking to benefit from the program must first apply for approval with U.S. Customs and Border Protection through the ESTA portal².

Changes under the Amendments

Under the *Terrorist Travel Prevention and Visa Waiver Program Reform*, travellers in 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 travelled to or been present in Iran, Iraq, Sudan, or Syria on or after March 1, 2011 (with limited exceptions-see below);
- Nationals of VWP countries who are also nationals of Iran, Iraq, Sudan, or Syria.³

These restrictions do not apply to VWP travellers whose presence in Iraq, Syria, Iran, or Sudan was:

- to perform military service in the armed forces of a program country; or
- in order to carry out official duties as a full-time employee of the government of a program country.

The above exceptions do not apply to the dual national restriction. (If you are a dual national, then the above two points do not apply and you and therefore are restricted from using the VWP.)

In addition, the amendments include other changes to the VWP to promote enhanced information sharing of terrorism and criminal data, and the use of INTERPOL databases and notices for border screening purposes. The amendments also require that all VWP travellers use an electronic passport for travel to the United States (Electronic System for Travel Authorization (ESTA)) by April 1, 2016.

Footnotes:

- 1 For H.R. 2029, *Consolidated Appropriations Act, 2016*, see the Library of Congress' Thomas Web site: <https://www.congress.gov/bill/114th-congress/house-bill/2029> .
- 2 See: <https://esta.cbp.dhs.gov/esta/> .
- 3 For additional information, see: <https://travel.state.gov/content/visas/en/visit/visa-waiver-program.html> .

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