

Client Alert



A report for clients and
friends of the Firm

November 2008

Electronic System for Travel Authorization (ESTA): It's Here to Stay!

As expected, the Department of Homeland Security (DHS) has published a final rule that will make ESTA mandatory for all Visa Waiver Program (VWP) travelers beginning January 12, 2009. ESTA is a fully automated, electronic system for screening passengers prior to their travel to the U.S. under the VWP. On August 1, 2008, DHS began to accept voluntary applications through the ESTA web site. DHS reports that 68,000 applications have been received since, representing a small fraction of travelers that come to the U.S. each year under the program.

The VWP currently permits the citizens of 27 countries to travel to the U.S. for tourism or business without obtaining a visa. Nationals participating in the VWP (1) must travel only for business, pleasure or transit, stay in the U.S. for 90 days or less, and, if arriving by sea or air, hold a valid ticket for return or onward travel; and (2) present a machine-readable passport (MRP) valid for six months past their expected stay in the United States. During fiscal year 2007, more than 15 million visitors from VWP countries entered the U.S.

The Bush administration announced on October 17, 2008 that, beginning November 17, 2008, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Slovakia and South Korea will be added to the VWP. In addition, so-called "roadmap" countries, which are on track to qualify for VWP admission, include Bulgaria, Cyprus, Greece, Malta, Poland and Romania.

For a complete listing of all VWP participating countries, please see the Bureau of Consular Affairs web site at http://travel.state.gov/visa/temp/without/without_1990.html.

As of January 12, 2009, nationals of VWP countries who plan to travel to the U.S. under the VWP will need to receive an electronic travel authorization prior to boarding a U.S.-bound airplane or cruise ship. Instead of completing Form I94W while traveling to the U.S., ESTA will require citizens of VWP countries to complete an electronic application that requests biographical, travel and eligibility information before their departure to the U.S.

By using the ESTA program, DHS seeks to verify if an individual is qualified for entry to the U.S. without a visa, and whether such travel poses any security threat to the U.S., prior to the arrival of the foreign national. An ESTA application may be submitted at any time prior to travel to the U.S., and, once approved, it will be valid for multiple entries up to two years, or until the foreign national's passport expires, whichever comes first.

DHS recommends that ESTA applications be submitted at least 72 hours prior to travel. The system will give one of 3 responses: travel authorization approved; travel not authorized; or pending. DHS advises that resolution to pending authorizations should take no longer than 72 hours. In the event that an ESTA applicant is denied authorization to travel to the U.S. under the VWP, the ESTA Web site will provide a link to the Bureau of Consular Affairs web site at travel.state.gov for instructions on how to apply for a visa. There is no mechanism to appeal a denial of travel authorization under ESTA.

VWP travelers who do not obtain ESTA travel authorization after January 12, 2009 will be denied boarding, or will be denied admission at a U.S. port of entry.

ESTA authorization must be renewed if, since receiving the authorization, the traveler obtains a new passport, changes his/her name, citizenship or gender, or if the answers to any eligibility questions change (e.g., if the traveler asserted immunity from prosecution).

We strongly recommend that individuals planning to travel under the VWP after January 12, 2009 apply for ESTA travel authorization as soon as possible. There is currently no cost in connection for applying for travel authorization through the ESTA web site. To apply for travel authorization under ESTA, visit the web site at <https://esta.cbp.dhs.gov/>.

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Client Update

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