

IMMIGRATION UPDATE:

VISA WAIVER PROGRAM IMPROVEMENT AND TERRORIST TRAVEL PREVENTION ACT OF 2015

Overview

On December 15, 2015, the Speaker of the House, Ryan Paul, announced that Congress reached an agreement on the Omnibus spending bill which is intended to fund the federal government through September 2016. Among the provisions in the bill is the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 (the Act) which introduces changes to the Visa Waiver Program (VWP).

Under the VWP, citizens of program countries must receive approval through the Department of Homeland Security's Electronic System for Travel Authorization (ESTA) before they are permitted to board a carrier for travel to the U.S. Using information from law enforcement and intelligence agencies, the Department of Homeland Security (DHS) determines if a traveler poses a law enforcement or security risk. If the traveler receives approval, he or she may visit the U.S. for up to 90 days without having to first obtain a visitor visa at a U.S. Consulate or Embassy abroad. Travelers under the program are subject to additional security screenings throughout their journey and upon arrival at a U.S. port of entry.

The Omnibus bill has been approved by a bipartisan majority of the U.S. House of Representatives. It is expected to pass in the U.S. Senate on December 18, 2015.

Proposed Changes to the VWP

Pursuant to the Act, all travelers travelling under the VWP will be required to present an e-passport containing biometric information after April 1, 2016. As such, any traveler who does not currently have an e-passport will need to apply for a new passport. Program countries will also be required to put in place mechanisms to validate e-passports at key ports of entry no later than October 1, 2016.

The Act also incorporates a terrorism risk factor and targets travelers or nationals of certain countries or areas of concern.

Under the Act, travelers who (1) have traveled, in the last five years (on or after March 1, 2011) to Iraq, Syria, a country designated by the Secretary of State as a country supporting terrorism (i.e. Sudan or Iran) or any other country or area of concern designated by the Secretary of Homeland Security or (2) a national of such a country, are restricted from using the VWP and must apply for a nonimmigrant visa at a U.S. Consulate or Embassy abroad.

The Secretary of Homeland Security has a broad power to waive the application of the Act to a traveler if the Secretary "determines that such a waiver is in the law enforcement or national security interest"

of the U.S. The Act also incorporates a narrower waiver for certain military personnel or government employees.

All other travelers who meet the criteria outlined above are required to obtain a nonimmigrant visa, regardless of whether they hold the nationality of another program country or regardless of the purpose of their visit to one of the countries or areas of concern.

The Act also incorporates additional requirements for program countries to share information. Program countries that fail to share information or are designated as “high-risk” can be terminated or suspended from the program for failure to comply.

Consequently, if a traveler wishes to enter the U.S. for either business or pleasure, he or she must obtain an ESTA approval under the VWP or obtain a nonimmigrant visa.

If you have questions, concerns or would like to schedule a call to discuss these changes, please contact one of our professionals at Guberman Garson Segal LLP (416 363 1234).

This document is for general information only and should not be construed as specific legal advice.