



INTERNATIONAL TRAVEL GUIDELINES

Guidance in light of U.S. Administration Travel Ban as well as other Executive Orders

Over the course of the last two years, the president has announced a series of Executive Orders that have allocated additional resources, tools, personnel and directives to the Department of Homeland Security with a focus mainly on undocumented foreign nationals, border security, and a more vigilant enforcement of existing laws. In light of the focus on immigrants residing in the United States, we issue this overview of your rights and responsibilities while present in the U.S. on a work visa, particularly when traveling abroad.

While it has always been important that every foreign national is aware of the immigration requirements and documentation that will facilitate exit from and entry into the United States in the correct status and for the correct duration, with border scrutiny intensified, a more in-depth understanding of your status, authorized activities, the nature of your visa in terms of permanent residence filings, and most importantly, what documents you are required to carry while in the United States, versus those required for international travel.

It is also important to note that the U.S. government has, in recent years, applied stricter standards with regard to visa issuance and inspection upon entry into the U.S. where heightened security checks both at the consular level and at the immigration inspection level at the U.S. port of entry can yield significant delays in the ability to travel in and out of the U.S. As such, foreign nationals should prepare for such delays during the holiday season where the frequency of international travel is much greater.

We, at Younossi Law, ***urge foreign nationals to contact our office prior to engaging in any international travel*** so that we may apprise foreign nationals regarding the correct documentation to carry and present, visa application procedures at the consulates, as well as any other travel issues that may be of concern.

U.S. TRAVEL BAN – CURRENT STATUS

On June 26, 2018, The U.S. Supreme Court upheld the Administration's Travel Ban, effective as of September 24, 2017. The Travel Ban indefinitely suspends the issuance of immigrant or nonimmigrant visas to applicants from the following countries: Libya, Iran, Somalia, Syria and Yemen plus North Korea and Venezuela [Note: Chad was removed from the Travel Ban, effective April 13, 2018]. Individual waivers are available on a very limited, discretionary basis.

The Travel Ban does not apply to the following foreign nationals:

- Lawful permanent residents of the United States;
- Foreign nationals who are admitted to or paroled into the United States on or after the effective date;
- Foreign nationals who have a document other than a visa, valid on the effective date or issued on any date thereafter, that permits him or her to travel to the United States and seek entry or admission, such as an advance parole document;
- Dual nationals when the individual is traveling on a passport issued by a non-designated country;
- Foreign nationals traveling on a diplomatic or diplomatic-type visa, North Atlantic Treaty Organization visa, C-2 visa for travel to the United Nations, or G-1, G-2, G-3, or G-4 visa; or
- Foreign nationals who have been granted asylum; refugees who has already been admitted to the United States; or any individual who has been granted withholding of removal, advance parole, or protection under the Convention Against Torture.

PRIOR TO INTERNATIONAL TRAVEL

Again, prior to any international travel, Younossi Law urges foreign nationals to contact our office as there may be situations where international travel is not recommended or there could be consequences to pending petitions or applications that have been filed for the foreign national.

For example, applicants who have filed for a *change in nonimmigrant status* should be aware that traveling during the pendency of the change of status application will cause the application to be deemed abandoned. Though the underlying application may be approved, the applicant will likely be required to depart the U.S., obtain a new visa stamp at a consulate overseas, and re-enter the U.S. to effectuate the new nonimmigrant status.

Younossi Law will also advise on travel concerns during the pendency of an *extension of nonimmigrant status* as international travel can impact the validity period given at the Port of Entry.

Please ensure that you have at minimum the following documents in order and with you at all times during your international travel:

Passport Validity---Prior to engaging in international travel, it is imperative that foreign nationals make sure that they have a valid passport in hand that is valid for at least six (6) months after the planned re-entry date into the U.S. Ideally, however, the passport will be valid for (6) months after the approved validity dates indicated on the nonimmigrant approval notice, Form I-797.

Nonimmigrant Visa---If foreign nationals are re-entering the United States in valid nonimmigrant status, it is also important to make sure that the foreign national has a valid nonimmigrant visa stamp in the passport to facilitate re-entry into the U.S. in the correct nonimmigrant status and for the correct duration.

If foreign nationals do not have a valid nonimmigrant visa stamp in your passport that will facilitate re-entry into the U.S. in the correct status, an application for such a visa stamp will need

to be made at a U.S. consulate abroad. This will require that an appointment be made in advance with the consulate. The visa application process at the U.S. consulate requires that foreign nationals appear in person for interview as well as fingerprinting and photographs prior to visa issuance.

Younossi Law provides a general list of documents that may be requested at the visa interview, but applicants should contact the consulate directly for any specific requirements as each consulate varies. Applicants also should note that the holiday season can be a busy time at the consulate due to the number of people applying for visas during their holiday travel. As such, applicants should anticipate potential delays in being able to secure an appointment with the consulate as well as potential delays in visa issuance. See <http://www.travel.state.gov/content/travel/en/us-visas.html> for up-to-date consular contact information and for information on projected visa appointment and processing times.

When applying for a visa to the United States, foreign nationals may also be subject to additional security and background checks which can add further delays in visa issuance. The State Department has provided very little information or guidance on what may trigger the checks, but they can be based on a variety of factors:

- Citizenship, Nationality or Country of Birth---Since September 11, 2001, consulates have imposed additional scrutiny for male visa applicants between the ages of 16 and 45 who were born in or are nationals or citizens of 26 countries of concern. Although, the State Department has not made this list public, the countries thought to be included are: Afghanistan, Algeria, Bahrain, Bangladesh, Djibouti, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Malaysia, Morocco, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, the United Arab Emirates, and Yemen. In addition, nationals or citizens of Cuba and North Korea – countries among those that the U.S. has identified as state sponsors of terrorism – are being subjected to increased scrutiny as well.
- Involvement in High-Technology or Scientific Fields---Foreign nationals employed in high technology, engineering, or the sciences should be prepared to be questioned closely about the details of their employment. Foreign nationals who work with products or services that have both commercial and military applications (known as "dual use" technologies) should also anticipate scrutiny.
- Appearance in National Security and Law Enforcement Databases---Consular officers are required to screen visa applicants through the State Department's security databases and lookout lists, which contain the names of individuals identified as security risks. A positive "hit" on one of these lists will trigger additional security clearances and may cause the consular officer to seek guidance from State Department headquarters on the further handling of the case which can delay visa issuance.

Advance Parole---Some foreign nationals are applicants for adjustment of status and plan to enter the U.S. using the advance parole document (AP). If this is the case, you must have the AP approved and in hand PRIOR to the departure from the U.S. The AP must be valid for the entire duration time that the foreign national is traveling abroad. You and your dependents who are employed in the U.S. should also carry with them a valid EAD card as this can sometimes be requested by the immigration officer at the port of entry.

AFTER INTERNATIONAL TRAVEL

RE-ENTRY INTO THE UNITED STATES

The Department of Homeland Security has established an automated entry and exit control system to track entries and departures and to identify overstays and individuals who pose a national security threat. This continuum of security measures begins overseas and continues through a visitor's arrival in and departure from the United States. In many cases, these security measures begin overseas, at the U.S. consular offices issuing visas, where visitors' biometrics (digital fingerscans and photographs) are collected and checked against a database of known criminals and suspected terrorists. When the visitor arrives at the port of entry, the same biometrics are used to verify the person at the port of entry is the same person who received the visa.

Once at the port of entry, an immigration officer will still review travel documents and ask questions about the nature of the stay in the United States. However, the immigration officer will now use the inkless, digital fingerscanner to capture two fingerscans and the officer will also take a digital photograph of the foreign national.

During these entry procedures, it is important to remain patient and answer all questions clearly. If you do not understand a question, you may ask for clarification before answering. Make sure to comply with all required entry and exit procedures; if you do not understand the required procedures, ask for assistance. Omission or misrepresentation of information, or failure to comply with required procedures can result in denial of entry, removal from the United States at a later date or even possible criminal penalties.

ELECTRONIC SYSTEM FOR TRAVEL AUTHORIZATION (ESTA)

ESTA is an automated system used to determine a foreign national's eligibility to travel to the United States under the Visa Waiver Program (VWP). The VWP enables most foreign nationals of participating countries¹ to travel to the US for tourism or business for stays of 90 days or less without first obtaining a visa. ESTA became mandatory in 2009 and all VWP applicants are required to complete the on-line application prior to travel. While it is recommended that foreign nationals apply at least 72 hours before travel, you can apply any time before boarding. In most cases, a response is received within seconds of submitting the application. Approved ESTA applications are valid for two years, or until the foreign national's passport expires, whichever comes first. A new ESTA authorization is required under the following circumstances:

- A new passport is issued
- Change of name
- Change of gender
- Country of citizenship changes
- Other change in circumstances

¹ VWP countries include: Andorra, Australia, Austria, Belgium, Brunei, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Lichtenstein, Lithuania, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Taiwan, United Kingdom

It should be noted that ESTA is not a visa and does not meet the legal requirements to serve in lieu of a visa, when a visa is required. For more information, and a link to the ESTA application, please see <https://esta.cbp.dhs.gov/esta/>.

FORM AR-11 AND ADDRESS CHANGE NOTIFICATION REQUIREMENT FOR ALL FOREIGN NATIONALS

All foreign nationals must be aware of the Department of Homeland Security's regulations on address change notification. All non-U.S. citizens, including lawful permanent residents, are required to notify DHS of changes of address within 10 days of such change, using Form AR-11. The only foreign nationals exempt from this requirement are nonimmigrants in the A (foreign diplomats) and G (representatives of international organizations) visa categories, and nonimmigrants who are not required to possess a visa and are in the United States for fewer than 30 days.

Note that the change of address you make on Form AR-11 or AR-11SR will not be communicated to DHS Service Centers or District Offices. Therefore, if you are an applicant for an immigration benefit, you must also send a written notice of the address change to the relevant DHS office(s) processing the case.

Failure to comply with the address change notification requirements may affect your ability to remain in the United States and your ability to reenter the United States after travel abroad; noncompliance may also be criminally punishable as a misdemeanor, with a fine not to exceed \$200 and/or imprisonment of not more than thirty days. Therefore, it is imperative that you follow the address change notification requirements, and we recommend that you make a copy of your address change form and other pertinent documents in the event that the Government alleges that you failed to comply.

For additional information on the address change requirement and to apply online, see <https://www.uscis.gov/ar-11>.

Younossi Law hopes that the above information is of help to you in your travels. We wish you happy holidays and safe travels.