

VISA WAIVER PROGRAM | FREQUENTLY ASKED QUESTIONS

1. What is the Visa Waiver Program (VWP)?

The VWP permits nationals from certain designated countries to apply for admission to the United States for 90 days or less as a nonimmigrant visitor for business or pleasure without first obtaining a visa from a U.S. Embassy/Consulate abroad. Note that the Electronic System for Travel Authorization program, or ESTA, now requires all travelers to the U.S. under the VWP to obtain pre-registration prior to their travel to the United States. ESTA registration is done through an online fully automated, electronic system, <https://esta.cbp.dhs.gov>. The program screens passengers before they begin travel to the U.S. and registration currently costs \$14. VWP travelers are encouraged to apply for authorization as soon as they begin to plan a trip to the United States, but at in any event no later than 72 hours before travel. ESTA authorization is generally valid for two years, or until the traveler's passport expires, whichever first occurs and is valid for multiple entries to the United States. If ESTA authorization is denied, the traveler must apply for a nonimmigrant visa at the appropriate U.S. Embassy/Consulate. Those travelers already in possession of a B1/B2 visa or other classification of visa are not required to register with ESTA.

2. Which countries qualify for Visa Waiver Program entry?

Please see the Department of State's website for a list of countries which qualify for the VWP: <https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visa-waiver-program.html>.

3. Does the list change?

Yes. From time to time, the Department of State adds or removes countries. For example, on November 17, 2008, seven countries were added to the list.

4. Are there any other countries whose citizens can enter the U.S. without a visa?

Yes. Citizens of Canada, Bahamas, Guam, Northern Marianas Islands, Federal States of Micronesia, Marshall Islands, and Palau are all allowed to enter the United States without visas, depending upon the nature of their entry. However, the authorization for these visa-free entries derive from legal authorities other than the Visa Waiver Program, and therefore subject to different privileges and restrictions.

5. How long can I stay under the VWP?

Maximum stay is 90 days but the U.S. Customs and Border Protection (USCBP) officer may limit your stay to less time depending on the reason(s) for your trip.

6. Can I extend beyond 90 days?

No.

7. Can I change status to another nonimmigrant status, such as H-1B or L-1?

No; if a nonimmigrant visa petition (e.g., H-1B) is approved for you while you are present in the United States under the Visa Waiver Program, you must leave the U.S. to obtain an H-1B or L-1 visa, and then return to the U.S. with the new visa.

8. Can I adjust status to Lawful Permanent Resident?

Yes, but **only** if you are eligible for adjustment as the beneficiary of an "immediate relative" petition (i.e., as the spouse, child or parent of a United States citizen over the age of 21). To qualify as a "child", you must be under age 21 and unmarried.

Please note that if you enter the U.S. under the VWP when already married to a U.S. citizen or if you marry shortly after admission, the Immigration Inspector may regard your entry as fraudulent (i.e., that you misrepresented your actual intent upon admission). This could result in problems with a subsequent adjustment of status application. You should seek legal advice if you intend to adjust your status based on marriage after entry under the VWP.

9. For what purposes can I be admitted?

You may enter for "pleasure" (WT) or for "business" (WB) reasons. Pleasure means vacation or holiday, including visiting family or friends and/or amusement parks or other entertainment events. Business means an activity directly related to your employment with your employer in your home country, including attending a business related seminar, convention or show, visiting customer/client sites, negotiating contracts or speaking engagements not involving payment (except for honorariums).

10. Who determines if I can enter the U.S. under VWP?

The USCBP officer at the port of entry has sole discretion to determine if you are admissible under the VWP. There is no right to review this decision before the District Director of USCIS or USCBP or in removal proceedings before an Immigration Judge. In fact, you must specifically waive your right to any administrative or judicial review of the Inspector's decision prior to boarding the carrier abroad. Furthermore, you do not have a legal right to counsel during the inspection and admission process.

11. What if I am denied entry?

You will be returned to your home country or the country of last residence, normally on the same day and on the same carrier. Depending on the reason for the denial of entry, you may lose the privilege of returning on the VWP for up to five years and, instead, may be required to apply for a visitor visa at a U.S. Consulate abroad.

12. What documents do I need to board the airplane at the point of departure abroad?

Passport issued by one of the designated countries and valid for at least six months. For VWP travel, passports issued after October 26, 2006 must be an e-Passport (includes an integrated computer chip capable of storing biographic information from the data page and other biometric information).

Approved pre-registration authorization via ESTA. You do not need to print authorization to carry with you however you should retain the application number so you may update your information in the future.

Round-trip, non-transferable transportation ticket valid for a period of not less than 1 year.

Completed form I-94W "Nonimmigrant Visa Waiver Arrival/Departure Record."

The airline carrier, which by law must have entered into an agreement with the U.S. for VWP, may have additional requirements. Check with your carrier.

13. What documents do I need to be admitted at the port of entry if I am arriving by air or sea?

- Passport issued by one of the designated countries and valid for at least six months. For VWP travel, passports issued after October 26, 2006 must be an e-Passport (includes an integrated computer chip capable of storing biographic information from the data page and other biometric information).
- Round-trip, non-transferable transportation ticket valid for a period of not less than one year.
- If visiting for pleasure, particularly if you are accompanied by immediate family members, normally a round-trip airline ticket with your passports will be all that is necessary. Be prepared to explain where you will be going and what you will be doing. If visiting a friend or relative, be prepared to provide the complete name and contact information in the U.S., including street address and telephone number.
- If visiting for business, you should have a round-trip airline ticket and a letter from your foreign employer explaining the nature of your position or assignment abroad, the reasons for your trip, the anticipated length of stay and a statement that your expenses will be covered by your foreign employer. Having a business card is helpful, plus evidence of registration for a conference, invitation from a U.S. company or organization to visit their site, speaking engagement, etc., may also be useful.

14. What documents do I need if I am arriving by land?

In addition to items listed in #12 above, you will need:

- Evidence of your permanent address abroad to which you intend to return, such as a lease or rental agreement. **Note:** ESTA registration is *not* required if entering by land.

15. What happens if I overstay the maximum time permitted on my I-94W?

If you stay beyond the expiration date provided by USCBP, you will be out of lawful status and removable from the U.S. as a VWP overstay. If apprehended, you will be removed from the United States without judicial review. Further, on the first day after your I-94 expires, you begin to accrue

unlawful presence in the U.S. Accruing 180 days or more of unlawful presence will result in a three year bar to returning to the United States; if your unlawful presence is over 365 days, there is a 10-year bar on admission.

16. What do I have to do when I depart the country?

Provide the I-94W to the carrier upon boarding the airline or to the Immigration Inspector at the land port of entry. Keep a copy of the I-94W, a copy of your airline ticket with return flight schedule or itinerary and try to get your home country to stamp your passport upon return so that you have evidence of a date certain of arrival. This evidence will help you to prove timely departure (i.e., no overstay) and will refresh your memory of prior trips if and when you are requested by the Department of Homeland Security to explain.

17. Can I depart the U.S. to Mexico or Canada and return using the I-94W?

Yes, you may be admitted for the time remaining on the initial 90 day admission provided the Inspector finds you admissible.

18. Can I depart the U.S. to Mexico or Canada at the end of the 89th day and return immediately for another 90 days?

The answer depends on the reasons for returning and on the discretion of the Inspector. However, it is more likely than not that you will be denied entry and will need to return to your home country for a reasonable period of time before attempting to return to the U.S. under the VWP.

19. What if I know that I will need to stay in the U.S. for longer than 90 days as a visitor?

We suggest that you apply for a visitor visa at a U.S. embassy prior to your arrival to the U.S. If the embassy issues you a visitor visa, you will then be eligible for admission for up to six months and be eligible to extend your visitor status in six-month increments during your stay in the U.S. For more information regarding applying for a visitor visa, please check the website of the U.S. embassy where you will be applying for the visa, <https://www.jackson-hertogs.com/us-immigration/travel-page/u-s-embassies-and-counsulates-abroad/>. You may wish to contact our office and set up a consultation with one of our attorneys, in order to review any and all options.