

# One Minute Memo®



## United States Implements New Visa Waiver Program Restrictions

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The Department of Homeland Security (“DHS”) and Department of State (“DOS”) announced immediate implementation of the *Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015*. Under the Act, certain individuals who could previously benefit from the Visa Waiver Program must now apply for a visa before traveling to the United States for business or tourism.

### The Visa Waiver Program (“VWP”)

The Visa Waiver Program allows eligible citizens of designated countries to travel to the United States for business or pleasure for up to 90 days without first obtaining a visa at a U.S. Embassy or Consulate. Travelers first obtain clearance through an online application system, Electronic System for Travel Authorization (“ESTA”).

### Newly Enacted Changes to the VWP

The Act prohibits the following individuals from traveling to the United States under the VWP:

- Nationals of VWP countries who have traveled to or been present in Iran, Iraq, Sudan, or Syria on or after March 1, 2011 (with limited exceptions for travel for diplomatic or military purposes in the service of a VWP country).
- Nationals of VWP countries who are also nationals of Iran, Iraq, Sudan, or Syria.

Travelers who currently have approved ESTA applications and who have previously indicated dual nationality with one of the four countries listed above on their ESTA applications will have their current ESTA applications automatically revoked. If an individual is currently in the U.S. when their ESTA registration is revoked, he or she may remain in the U.S. through their admitted duration of stay.

The Secretary of the DHS has the ability to grant waivers of these restrictions on a case-by-case basis. Examples of those who may be eligible for a waiver include individuals who traveled to Iran, Iraq, Sudan, or Syria on behalf of a non-governmental organization (“NGO”) as a journalist for reporting purposes or on behalf of other international or regional

organizations. Customs and Border Patrol (“CBP”) has not yet released instructions on how to apply for a waiver. Further guidance on this and a new updated ESTA application is expected in February 2016.

## Conclusion

Newly enacted regulations will severely limit the use of the VWP program for citizens of VWP countries who have traveled to Iran, Iraq, Sudan, and Syria over the past four years, along with dual citizens of those countries. Instead, these individuals must apply for and receive a visitor visa at a U.S. Consulate or Embassy before entry to the United States. Seyfarth Shaw LLP will continue to monitor this situation and will send updates as they occur.

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