

## **New Procedures Now in Place for International Travelers: US-VISIT Biometrics and ESTA**

**January 22, 2009**

### **US-VISIT**

Effective January 18, 2009, the Department of Homeland Security (DHS) expanded the categories of non-U.S. citizens required to provide biometrics upon entry or re-entry to the United States.

All non-U.S. citizens, *except Canadians applying for admission to the United States as B-1/B-2 visitors for business or pleasure and those specifically exempted*, will be subject to US-VISIT procedures.

#### ***What Is US-VISIT?***

US-VISIT, which stands for the United States Visitor and Immigrant Status Indicator Technology Program, provides visa-issuing posts and ports of entry with biometric technology that enables the U.S. government to establish and verify the identity of travelers to the United States.

In many cases, a traveler's biometrics—digital fingerprints and a photograph—are collected at a U.S. visa issuing post overseas and checked against a watch list of known criminals and suspected terrorists. When the traveler arrives in the United States, the same biometrics are collected to verify that it is the same person who received the visa. Collecting biometrics helps prevent the use of fraudulent documents to enter the country illegally and helps protect against identity theft in the event of lost or stolen travel documents.

#### ***Who Is Subject to US-VISIT?***

The following non-U.S. citizens will be required to provide biometrics when entering or re-entering the United States:

- Persons entering the United States who seek admission on nonimmigrant visas
- Persons traveling without a visa as part of the Visa Waiver Program
- Lawful permanent residents of the United States (LPRs)
- Persons entering the United States who seek admission on immigrant visas
- Persons entering the United States who seek admission as refugees and asylees
- Canadian citizens who are currently required to obtain a Form I-94 (Arrival-Departure Record) upon entry or who require a waiver of inadmissibility to enter the United States (this excludes most Canadian citizens entering the United States for purposes of shopping, visiting friends and family, vacation, or short business trips)
- Persons paroled into the United States
- Persons applying for admission under the Guam Visa Waiver Program

#### ***Additional Information***

DHS has also provided the following additional information regarding US-VISIT procedures and processing:

- Canadians applying for admission to the United States under a B-1 or B-2 nonimmigrant classification for business or pleasure, which represents most Canadian travelers to the United States, are not required to enroll in US-VISIT at this time.
- Canadian citizens who must now enroll in US-VISIT are those issued a Form I-94 (Arrival-Departure Record), including:
  - Canadians applying for admission in the following nonimmigrant classifications: C, D, F, H, I, J, L, M, O, P, Q 1, Q 3, R, S, T, TN; and
  - Canadians who are granted a waiver of inadmissibility to enter the United States.
  - Canadians requiring issuance of Form I-94 are already referred to secondary inspection. Therefore, no additional wait time will be added.
- H-1B visa holders will follow existing protocols and will be screened through US-VISIT when applying for a new multiple-entry Form I-94 or when referred to secondary inspection for other reasons.
- At seaports, LPRs returning from a closed-loop cruise (cruises that begin and end at the same port in the United States) will be exempt from US-VISIT processing. LPRs returning to the United States from an “open” cruise will be subject to US-VISIT processing.
- Non-U.S. citizens entering or re-entering the United States at a land border port of entry will be processed somewhat differently, as follows, at the inspecting officer’s discretion:
  - LPRs will need to provide biometrics only if they are referred to secondary inspection.
  - All other non-U.S. citizens included in this final rule—unless specifically exempt—will experience US-VISIT procedures during secondary inspection, just as currently do most non-U.S. citizens already subject to US-VISIT procedures (e.g., those who require a Form I-94).
- Non-U.S. citizens who seek admission with Border Crossing Cards and who do not have a Form I-94 will still go through US-VISIT procedures, at the discretion of Customs and Border Protection (CBP) officers.

### ***How This Affects You***

All non-U.S. citizens who are subject to US-VISIT processing should be prepared to provide biometrics upon arrival to the United States.

### **ESTA**

DHS now requires all eligible citizens or nationals from Visa Waiver Program (VWP) countries to obtain approval through the Electronic System for Travel Authorization (ESTA) prior to traveling to the United States. The VWP allows nationals and citizens of VWP countries to travel to the United States as visitors for business or pleasure for a temporary period of 90 days or less without first obtaining a B-1/B-2 visa stamp from a U.S. consulate.

ESTA is a web-based system that determines the preliminary eligibility of nationals and citizens from a VWP country to board a carrier for travel to the United States. If approved, the authorization will be valid for multiple entries for up to two years or until the traveler’s passport expires, whichever is shorter. For more information, please see our prior Immigration Alerts on this subject dated October 20, 2008 ([http://morganlewis.com/pubs/ImmigrationAlert\\_VisaWaiverProgramExpands\\_20oct08.pdf](http://morganlewis.com/pubs/ImmigrationAlert_VisaWaiverProgramExpands_20oct08.pdf)); September 8, 2008 ([http://www.morganlewis.com/pubs/ImmigrationAlert\\_VisaWaiverElectronicSystem\\_08sept08.pdf](http://www.morganlewis.com/pubs/ImmigrationAlert_VisaWaiverElectronicSystem_08sept08.pdf)); and June 6, 2008 ([http://www.morganlewis.com/pubs/ImmigrationAlert\\_ElectronicSys\\_VisaWaiver\\_06jun08.pdf](http://www.morganlewis.com/pubs/ImmigrationAlert_ElectronicSys_VisaWaiver_06jun08.pdf)).

The citizens or nationals of the following countries are currently eligible to travel to the United States under the VWP: Andorra, Australia, Austria, Belgium, Brunei, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Japan, the Republic of Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom.

### **How to Apply for ESTA Authorization**

Nationals and citizens of a VWP country must complete the ESTA application online at <https://esta.cbp.dhs.gov>, preferably as soon as travel plans are begun, but no later than 72 hours prior to departure. Should the application be denied, the traveler will need to apply for a visa at a U.S. consulate.

### **How This Affects You**

Nationals and citizens of VWP countries who wish to travel to the United States as visitors for business or pleasure for a temporary period of 90 days or less and without a B-1/B-2 visa stamp should obtain ESTA approval as soon as travel is expected.

Morgan, Lewis & Bockius will continue to monitor this process and will update you with any new information as it becomes available. If you have any questions about any of the issues raised in this Morgan Lewis Immigration Alert, please contact:

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