

US IMMIGRATION CLIENT ALERT

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June 13, 2008

DHS to Require Electronic Pre-Approval for Visa Waiver Travelers

EXECUTIVE SUMMARY

The Department of Homeland Security will soon inaugurate the Electronic System for Travel Authorization (ESTA), an online pre-approval system for travelers under the Visa Waiver Program. When the program is fully implemented early next year, Visa Waiver travelers will be required to use an online system to obtain advance approval to travel at least 72 hours before departing. ESTA will be available on a voluntary basis beginning August 1 and will become mandatory in mid-January 2009. Nonimmigrant visa holders will not use the system.

Later this summer, the Department of Homeland Security (DHS) will introduce the Electronic System for Travel Authorization (ESTA), an online pre-approval system for travelers under the Visa Waiver Program (VWP). When the program is fully implemented next year, Visa Waiver travelers will be required to use ESTA to get advance approval to travel to the United States at least 72 hours before departing. ESTA will be available on a voluntary basis beginning August 1, 2008 and is expected to become mandatory in mid-January 2009. The ESTA approval will allow a traveler to board a carrier for travel to the United States under the VWP, but will not guarantee admission to the United States. VWP travelers will still be inspected at ports of entry.

The Visa Waiver Program allows citizens and nationals of 27 countries to enter the United States for business or tourism visits of up to 90 days without the need to apply for a visa. In 2007, a law was enacted to require that DHS create an advance approval system to assess whether prospective Visa Waiver Program travelers pose law enforcement or security risks. The ESTA program was developed in compliance with that law.

Under the new system, a Visa Waiver Program traveler will be required to submit an online application, providing his or her biographic and passport information and information about his or her basic eligibility to use the VWP, such as previous arrests and convictions, communicable diseases, and previous visa denials. Visa Waiver travelers already provide this information upon arrival to the United States under the current VWP procedure. The traveler will also need to provide his or her U.S. destination, flight information, and other travel details, though specific travel plans are not required at the time at which the traveler submits the application – these can be submitted or updated later when travel plans are finalized. Travelers will be free to submit

ESTA applications at any time so long as they obtain ESTA authorization at least 72 hours before departing for the United States.

Once a traveler submits the ESTA application, it will be reviewed against the appropriate law enforcement databases. According to DHS, the ESTA website will provide an almost immediate determination of eligibility for travel under the VWP in most cases. Once approved, an ESTA travel authorization will remain valid for up to two years or until the traveler's passport expires, whichever occurs first. The ESTA authorization will also be valid for multiple entries into the U.S. during the validity period, but travelers will have to update the ESTA website with their specific travel details at least 72 hours prior to each departure.

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