

IMMIGRATION**NEW RESTRICTIONS ON VISA WAIVER PROGRAM/ESTA**

by *Elise S. Levasseur, Esq.*

The Department of Homeland Security (DHS) has begun the process of implementing changes to the Visa Waiver Program (VWP) after President Obama signed into law the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015. The new law made significant changes to the VWP for citizens of participating countries in response to the recent terrorist attacks in Paris and in San Bernadino, California. DHS has not yet announced exactly how it will implement the program.

Under the VWP, nationals from 38 participating countries can travel to the U.S. for up to 90 days without obtaining a B-1/B-2 visa if they are cleared through the [Electronic System for Travel Authorization](#).

The new law prohibits these same foreign nationals from entering the U.S. under the VWP if the foreign national has visited since March 1, 2011, or has dual nationality with countries identified in the new law as countries of concern (currently only Syria, Sudan, Iran and Iraq, but the DHS has the authority to designate additional countries). The only exception to the rule is for travel to the countries of concern to perform military duty for the VWP-country, or to conduct duties as a full-time employee of a VWP-country government. A person who is a dual citizen of a VWP country and a country of concern or a VWP-country national who has traveled to a country of concern since March 1, 2011 must obtain a B-1/B-2 visa prior to traveling to the U.S.

The new law also adds new, more stringent passport requirements to qualify for the VWP. By April 1, 2016, all VWP travelers (including infants and children) must present an e-Passport that is machine readable and contains an electronic chip. The electronic chip stores biometric data, digital signatures and a chip ID, among other information. Those without an e-Passport after the effective date will need to obtain a B-1/B-2 visa to travel to the U.S.

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