

A Quick Checklist Of Restrictions On Travel To The US

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Law360, June 29, 2018, 2:39 PM EDT

With the [U.S. Supreme Court](#)'s recent decision upholding the president's 2017 travel ban proclamation, a lot of people remain confused about the government's restrictions on travel to this country. In the last three years, new restrictions have been imposed on waiver-free travel, three successive travel bans have been implemented and the third one has itself been modified after issuance.

To try to help readers make sense of this web of travel restrictions, we have created a checklist to walk you through the restrictions that face individuals hoping to travel to the U.S.

President Donald Trump's 2017 Travel Ban — Proclamation 9645

- **Countries affected:** Travelers with passports from Iran, Libya, Somalia, Syria, Yemen, North Korea and Venezuela.
- **Existing visa holders:** May continue to use their visas, but may be subject to enhanced vetting at the port of entry by U.S. Customs & Border Protection.
- **Waiver:** Waivers of the travel ban are permitted but are sparingly given. Assuming the foreign national is otherwise admissible to the U.S., then the U.S. Embassy will apply a 3 part test to determine eligibility for a waiver:
 - Would denial of the visa cause undue hardship to the foreign national?
 - Would their entry would be in the U.S. national interest?
 - Assuming the first two criteria have been met, then the U.S. Embassy will forward the case to State Department Headquarters for a determination whether the foreign national poses any threat to U.S. national security or public safety. If not, then in theory the waiver should be granted.
- **Close Family and Business ("Bona Fide") Ties to the U.S.:** Although this had previously been a basis to seek a waiver of the travel ban, that is no longer true for anyone other than refugees (see below).
- **Dual Nationals:** Dual nationals holding a second passport from a non-travel-ban country are not subject to these restrictions; however, they may encounter enhanced screening at the port of entry.

- **U.S. Permanent Residents:** Permanent residents of the United States (green card holders) who have a passport from one of the enumerated countries are not subject to the travel ban.
- **Diplomats:** Diplomats may enter the U.S. on a diplomatic visa.
- **Confusing Language:** While the travel ban proclamation speaks in terms of “denial of entry” for nationals of certain countries, the practical effect will be that these individuals will be denied visas even before they attempt to enter the U.S.
- **Iran:** Iran has more travelers to the U.S. than the other six affected countries combined. Iranians with existing visas may travel to the U.S. New visas will only be granted to F-1 students, M-1 students and J-1 scholars and other exchange visitors. All other nonimmigrant visa applications and immigrant visa applications are suspended.
- **Libya:** B-1/B-2 visitor visa application processing is suspended, as are immigrant visa applications.
- **Somalia:** Immigrant visa processing is suspended. All nonimmigrant visa applications will be subject to enhanced vetting.
- **Syria:** All nonimmigrant and immigrant visa processing is suspended.
- **Yemen:** B-1/B-2 visitor visa application processing is suspended, as are immigrant visa applications.
- **North Korea:** B-1/B-2 visitor visa application processing is suspended, as are immigrant visa applications.
- **Venezuela:** Certain government officials will no longer be able to enter the U.S. as B-1/B-2 visitors. Other visa applicants will be subject to enhanced vetting.

Refugees: As a result of an order issued by the government in October 2017, and a district court ruling on Dec. 23, 2017, all overseas refugee applications for citizens of 11 countries are suspended unless the applicant can show a bona fide relationship (such as a close family member or working relationship) to a person or entity in the U.S. The 11 countries are: Egypt, Iran, Iraq, Libya, Mali, North Korea, Somalia, South Sudan, Sudan, Syria and Yemen.

2015 Restrictions on ESTA Visa Waiver Travel to the U.S.

Restrictions: Under amendments to the Visa Waiver Program enacted by Congress in 2015, you may not travel to the U.S. visa-free, using the Electronic System for Travel Authorization, if you are:

- A national of a VWP country who has traveled to or been present in Iraq, Syria, Iran, Sudan, Libya, Somalia or Yemen at any time on or after March 1, 2011 (with limited exceptions stated below);

or

- A national of a VWP country who is also a national of Iraq, Syria, Iran or Sudan (dual nationals).

Exceptions: These restrictions do not apply to VWP travelers whose presence in Iraq, Syria, Iran, Sudan, Libya, Somalia or Yemen was:

- to perform military service in the armed forces of a VWP program country, or
- in order to carry out official duties as a full-time employee of the government of a VWP program country.

Those qualifying under the exception should carry documentation to prove it up.

Waiver to Travel Visa-Free: DHS may grant a waiver of these restrictions to certain individuals on a case-by-case basis. However, you cannot submit an application for a waiver; you must simply fill out the ESTA form and see if you get approved for visa-free travel. Otherwise, you must apply for a formal B-1/B-2 visitors visa.

Note that, unlike elements of the travel ban, the VWP amendments do not prohibit any travel to the U.S.; they only prohibit visa-free travel, forcing the traveler to seek a visa before commencing their trip.

While neither the VWP amendments nor the travel ban are simple, this checklist can help guide you through the weeds to discern how all of this affects any particular traveler to the U.S.