OUR PRACTICE

Temporary Stays: Categories and Processing

Most people come to the United States – at least initially – on a temporary basis rather than permanent. Arranging to come temporarily requires some or all of the following steps:

- **Find a classification appropriate for the purposes and characteristics of the "principal alien" and family members;**
- **Get an employer or agent to file a preliminary petition to the immigration service (USCIS) (for H, L, O, P. or Q classifications only);**
- **Gather proof of nonimmigrant intent, where applicable;**
- **Determine whether, where and how to apply for a visa;**
- **Travel to a U.S. border, port or airport for inspection; or**
- **Maintain status by complying with limitations on activities, departing on time or applying for extension or change of status, and avoiding deportability.**

Visa Classifications

There is no such thing as a generic visa or even a "work visa" or "work permit" for a nonimmigrant. The U.S. has defined a set of visa classifications in which one can enter temporarily. They have been assigned letters of the alphabet in the order they were created by Congress. Presently, they range from A – V. Almost all classifications in this "alphabet soup" contain sub-classifications designated by a number (i.e., A-1, A-2), and some classifications are even further sub-categorized (i.e., H-1B, H-1C, H-2A, H-2B, H-3, H-4). Each classification has different rules of eligibility, procedure, allowed activities and limitations on duration of visas and stay.

Family Members. Spouses and unmarried children under age 21 of the "principal alien" normally can accompany or follow in a corresponding family classification (i.e., F-2, H-4, J-2, L-2), or they can obtain their own classifications independently in order to be allowed the activities they want to pursue (i.e., work). Importantly, spouses and children in some dependent classifications may obtain work authorization (A, E, G, J, K, L, V).

Preliminary Petitions. Five (and only five) classifications require that an employer first file a petition with the immigration service (USCIS) in the U.S. and gain approval before taking any other step: H, L, O, P and Q. For all of them, a specific employer must petition for a specific alien worker for a specific job, often in a specific location in the U.S. The process should be pursued as far in advance of desired work as possible. USCIS papers can be filed as early as six months beforehand, and in some cases even further preliminary filings or arrangements with other agencies or entities are required. The USCIS usually takes a few months to issue approvals, but in most employment-based classifications, USCIS will process the petition within 15 calendar days for an extra $1,000 "premium processing fee." The USCIS approval is then presented with the visa applications and/or in seeking entry.

Nonimmigrant Intent. U.S. law presumes that every person seeking to come to the U.S. intends to stay permanently, and it is the burden of the applicant for most temporary visas and admission to the U.S. to convince the Consular or immigration officer otherwise, with some important exceptions.

For some visa classifications, the alien must be prepared to demonstrate "a residence in a foreign country which he has no intention of abandoning." This harsh standard applies to visitors, students, exchange visitors and certain trainees and temporary workers (B, F, H-2A, H-2B, H-3, J, M, O-2 and some P). While this does not necessarily require the maintenance of an independent household abroad while the person is in the U.S. (particularly if the person customarily resides in someone else's home abroad), these applicants should be particularly prepared to present evidence of ties to their home country, circumstances that make it sensible for them to return after their visit to the U.S., and clear arrangements for their physical residence upon return home).

The law requires that most other applicants demonstrate that they are coming "temporarily" or for a specifically limited time. As a practical matter, this tends to require the same kinds of evidence of home country ties, when requested by the government.

There are some special exceptions. H-1B and L-1 workers and their families are statutorily exempted from the nonimmigrant intent requirement, which makes them the most popular categories for people who are simultaneously trying to arrange permanent residence. Other classifications, including A, E, G, I and N, are subject to an intermediate standard that arguably allows a "dual intent" but as a practical matter can be subject to occasional problems when they lack home country ties or have pursued permanent residence. Finally, some classifications are clearly designed as a bridge to permanent residence, so that nonimmigrant intent is not an issue for them (K, S, T, U and V). The types of documentation that can be helpful in demonstrating nonimmigrant intent include the following:

1. Ties to home country, including presence of nuclear and/or extended family, career opportunities such as job offers, ownership of property, or interests/opportunities that may be forfeited if the alien does not return to his home country.
2. History of alien's and family's timely return from U.S. on prior trips.
3. Adequate financial arrangements for visit, including such things as pre-purchased round trip tickets, a sponsoring employer's obligation for expenses/salary, an affidavit of support by a U.S. citizen or permanent resident along with a letter explaining temporary purpose of visit, arrangements for support of family remaining abroad and arrangements for resumption of work upon return.
4. Specific travel plans including pre-paid round trip airline tickets, hotel reservations, car rental reservations and a detailed itinerary.
5. A finding of lack of nonimmigrant intent (usually referring to "Section 214(b)" on a notice of decision) can be very difficult to overcome, particularly when one of the classifications requiring a continued foreign residence is involved. This is because the decision rests, in effect, on a factual finding on which the consular officer cannot be legally overruled, even by the Secretary of State. Nevertheless, legal counsel sometimes can be helpful in avoiding or overcoming an adverse finding.

Applying for Visas

A visa is a sticker placed in one's passport by the State Department, usually through a U.S. Consulate outside the U.S., reflecting that the alien is authorized to appear at a border or port for inspection. It is not automatic approval for entry. Once the visa is used for entry, its expiration does not affect the validity of that stay, which is instead governed by the I-94 card issued by the port inspector. Once a visa has been used up, expired or cancelled, a new visa must be obtained to seek a new admission to the U.S.

The most important practical questions about visas are whether to apply for one, where to apply and how to avoid inadmissibility.

Whether to Apply for a Visa

Certain tourists and business visitors are exempt from the visa requirement for short visits under one of several visa waiver programs.

Most temporary visitors in any nonimmigrant status may return from travel to Mexico or Canada (and nowhere else) for up to 30 days on an expired visa, which is deemed "automatically revalidated" for re-entry in the new status, even if the new classification is different from the visas. Automatic revalidation is not available if the person applies for a new U.S. visa while in Canada or Mexico, or if the person is from a country deemed a "state sponsor of terrorism."

In addition, Canadian citizens have special exemption from the visa requirement for any classification except E investors and traders and K finances; they need only appear at the border, port or airport with the types of evidence other people would use to apply for a visa, and they are allowed entry. Canadian visitors are not even provided an entry card but are effectively admitted for six months.

Where to Apply

Most visa applications are made at the U.S. Consulate in the applicant's home country, but not always. The one U.S. Consulate that must accept your application is the one having jurisdiction over the place of your residence. For persons in countries where there is no U.S. Consulate (i.e., Iran and certain "hot spots"), known as "homeless" aliens for consular purposes, the State Department has designated another country for application. An applicant who is or will be physically present in another country may apply there, but the consulate has discretion to refuse the application on the grounds that it should be reviewed in the country where the consulate has more familiarity with the applicant's circumstances.

The U.S. Consulates in Canada and Mexico are popular places for applicants who are already in the U.S. but somehow ineligible to extend stay or change status within the U.S., or who just want to obtain a visa stamp for sudden travel elsewhere later. Consulates in Mexico will not even schedule a third country national for an interview unless the person is renewing a visa in the same classification as before. Applicants making a trip to Canada or Mexico purely for a new visa should realize that the consulate may choose to refuse the visa for discretionary reasons, such as unfamiliarity of that consulate with document characteristics or schools in the applicant's home country. If the applicant does not have time left on a prior visa (and if the consulate in Canada or Mexico does not cancel that), the applicant will have to travel to the home country and arrange a visa interview there in order to get back into the U.S.

With some important exceptions, the visa of a person who has overstayed on that visa is automatically cancelled, and the person must obtain all future visas in their country of nationality. Determining whether the prohibition against "third country" visa applications has taken place, or whether an exemption may apply, can be quite complex.

It was previously the case when someone physically present in the U.S. sought to renew an existing visa in E, H, I, L, O, or P status (for purposes of future re-entries from abroad), they would be able to make the application to an office of the State Department within the U.S. in a process commonly called "visa revalidation." However, as of June 23, 2004, the visa revalidation service was discontinued by the State Department.

How to Apply

Visa applications to a consulate are made electronically, but an interview may be scheduled through methods that can vary based on each consulate's local procedures and the applicant's situation. Most U.S. Consulates provide reasonable explanations of their local procedures on their respective websites, which can be accessed through a State Department embassy and consulate listing.

Variations among consulates include: how to schedule the appointment (phone, online), how far in advance appointments are available, whether the visa application form must be completed online before an interview can be scheduled, where to pay the visa fee, and how and when the passport with visa will be returned. For applicants' planning purposes, the State Department publishes "Visa Wait Times," reflecting the period of time applicants in certain classifications typically must wait to obtain an appointment and the time most applicants must wait after their interview to receive the passport and visa.

Based on congressional requirements, almost all applicants must be personally interviewed. Consulates are allowed (but not required) to waive interviews for applicants who are under age 17, over age 59, eligible for an official or diplomatic visa, or renewing a visa in the same classification at the same consulate within one year of the previous visa's expiration. Other interview waivers can only be made in "unusual circumstances." But consulates can choose to require an interview of any applicant. Even if the interview is waived, the applicant normally must appear for fingerprinting at the consulate unless he or she has been "ten printed" in a previous application (since 2007). Children often need not appear with their parents, but they must be physically present in the consular district when their parents apply. Even adults with interview and fingerprint waivers are supposed to be physically in the country of application while the application is pending.

Consulates are conducting more rigorous screening of applicants against security lookout lists and technology protection lists, and questions about an applicant's identity and purposes occasionally take weeks or months to resolve, while the applicant is stranded outside the U.S. For these reasons, visa applications should be made as early as possible. In most cases, visas can be issued as much as 90 days before actual travel. People already in the U.S. should make careful arrangements before traveling abroad and should consider avoiding international travel.

The primary visa application form for all temporary visas is DS-160. It must be completed online on the State Department's website in order to print a bar code that a consulate can scan to avoid retyping the data. The answers to the form's extensive and seemingly mundane questions can have complex and unanticipated consequences in some cases.

All visas in all countries require a $140 machine readable visa application fee. H, L, O, P, Q and R visas require $150 instead. E visas require $390 instead. An additional "reciprocity" fee can be required, depending on the country of the applicant's nationality and the visa classification requested, according to a "reciprocity schedule" available on the State Department's Reciprocity Tables. All applicants require a digital passport photo conforming to specifications that are increasingly enforced, particularly concerning a light background and no head covering except in special circumstances.

The supporting documents required, in addition to evidence of nonimmigrant intent (where applicable), depend on the classification involved. At least three layers of rules concern who is eligible for a particular visa classification and the documents needed to prove eligibility: the Immigration and Nationality Act, State Department regulations and an internal (but publicly available) State Department instruction book for the consulates called the Foreign Affairs Manual (Volume 9 for visa matters). The State Department also occasionally sends "Visa Policy Updates" to consulates to disseminate new procedures and to emphasize certain points. Some of these updates are made publicly available on the State Department website.

When a visa is issued, a machine-readable sticker is placed in the applicant's passport. The visa sticker contains the applicant's photo, type (normally "R" for "regular," as opposed to diplomatic), classification (i.e., "B-2," "H-1B," etc.), the number of times it can be used ("M"; for multiple, or a specific number), and expiration date (the period of time during which it can be used to seek admission to the U.S.). Some visas include "annotations" about any underlying USCIS petition, the principal applicant being accompanied, or waivers.

Sometimes the consulate uses the annotation to send non-binding signals to U.S. immigration inspectors and adjudicators, who may have access to the consular notes in the State Department's "Consular Consolidated Database" (CCD). For instance, an annotation "no EOS/COS" suggests special concerns about nonimmigrant intent in a borderline case, in effect asking that no extension of stay or change of status be granted. Someone with such an annotation should seek legal counsel before applying for extension or change. On the other hand, an annotation such as "prospective student" alerts the USCIS that the application has disclosed an intent to change from visa to student after entry, increasing the chances that an application to USCIS for such a change will be granted. Visa holders unclear about the import of a visa annotation should seek legal counsel.

If the visa is to be denied, the consular officer is supposed to obtain supervisory review first, but this review is sometimes quite cursory and automatic particularly in visitor visa cases. The consulate is supposed to give written reasons for denial, but often the notice states only "214(b)," "221(g)," or "212(a)(6)" without any clarification. An applicant receiving denial should ask for written particulars about the reasons. While there is technically no legal "appeal" from a visa denial, often legal counsel can take meaningful steps to obtain further review of the application based on clarified or additional evidence and legal argument, using complex procedures including seeking "advisory opinions" from the State Department in Washington, D.C.

Avoiding or Overcoming Inadmissibility

The consulate can deny a visa not only if the applicant is not eligible for the classification sought but also if the application is subject to one of a long list of inadmissibility grounds set out in the law. The DS-160 form asks about many such grounds, but sometimes inadmissibility is determined through a State Department investigation or database, through interview, or through other information in the application.

Consulates increasingly have access to a wide range of data about past overstays, encounters with immigration officers, criminal arrests, and student or exchange visitor irregularities. Any concerns about inadmissibility should be brought to the attention of legal counsel. An applicant who is tempted to lie on an application should know that a misrepresentation, later discovered by the government (even years later) can result in permanent inadmissibility with only a limited waiver available (and could even unravel permanent residence subsequently obtained).

If the applicant has had an arrest within the past two years or any conviction ever for driving under the influence of alcohol, the consular officer MUST refer the applicant to a locally designated medical clinic for examination about whether the applicant poses a danger. Applicants referred for medical exam should seek legal counsel.

Legal counsel may be able to assist an applicant in preventing or overturning a finding of inadmissibility at several levels. When faced with some grounds of inadmissibility, particularly a past misrepresentation in an immigration matter, a consular officer is required to take the initiative to request an "advisory opinion" from the State Department's "Visa Office" in Washington, D.C., even if through a simple email. In those or other situations, the applicant's counsel may request such a review and make arguments in it. Often part of the effort is to present new evidence to allow a full, fresh review.

After a finding of inadmissibility, the consulate is to notify the applicant if a waiver might be available and provide forms for waiver application, which the consulate forwards, with an important consular

recommendation and explanation, to the applicable overseas U.S. immigration office for review and decision. This process often takes only a few days but can take six weeks or more while the applicant waits, stuck outside the U.S. Legal representation in a waiver application is highly advisable.

Inadmissibility grounds can also present a problem in the U.S. immigration inspection, even after a visa is issued.

Inspection

A visa holder next seeks to enter the U.S. while the visa is valid (or someone exempt from visa requirements simply seeks to enter). This occurs either at a pre-flight inspection unit at an airport abroad (i.e., Canada, U.K.), at the first airport in the U.S., or at a land border point. Of course, it is unlawful to physically enter the U.S. without being inspected. The person submits documents showing admissibility: usually a passport containing a nonimmigrant visa, a border crossing card (now often called a "laser visa"), or a passport demonstrating citizenship of a country exempt from visa requirements. U.S. permanent residents and citizens present different documents. Some frequent travelers may obtain "PortPASS" or "INSPASS" documents for streamlined inspection.

Most aliens partially complete and receive from the immigration inspector a white "I-94" or green "I-94W" departure card (not to be confused with a "Green Card"!) reflecting the visa classification, the date of required departure, and an 11-digit assigned number. The period of stay authorized on the I-94 card is not dependent on, and often can exceed, the expiration date of the visa. Canadian citizen tourists normally receive no document. Often I-94 cards contain errors, so travelers should careful inspect the card BEFORE walking away from the inspector. After that, corrections can be requested at a CBP "deferred inspection" site, where replacement for a lost I-94 might also be requested (CBP might suggest instead filing Form I-102 with USCIS).

Some applicants for entry are placed in "secondary inspection," where a more thorough examination can take place after all routine inspections are completed for the arriving vessel. Persons arriving with an "advance parole" travel document, re-entry permit or an I-551 stamp (as opposed to the actual permanent resident card) are routinely placed in secondary inspection for a more thorough review of their travel documentation. Others, such as those who have been arrested before or those who are subject to "special registration," are also more likely to be sent through secondary inspection. Such persons should consult with an attorney before they travel so that they can be prepared for this process. An attorney normally cannot participate in the inspection itself, but an attorney can consult with the applicant.

Applicants should be aware that DHS has been making meaningful improvements in the ability of immigration inspectors to view records of the applicant, including lookout lists, criminal records, past interviews and even visa applications, documents submitted with visa applications and consular database notes. The prospect of permanent inadmissibility from a finding of misrepresentation should strongly reinforce the general rule that "honesty is the best policy."

If the person lacks proper documents or is found to have made a misrepresentation in seeking entry, the inspector can send the person back without a hearing under a process called "expedited removal." The possibility of a five-year or even permanent bar on reentry arising from a border encounter without the protection of a hearing should encourage people to make sure they have their papers squarely in order before seeking U.S. entry. Any person with a complex or uncertain U.S. immigration history should consult counsel before making the trip. Fraudulent efforts can also result in vehicle seizure at land borders. Normally there is no formal appeal from an expedited removal order, but counsel can sometimes convince the officials to withdraw such an order by proving it was improperly or unnecessarily issued. A similar summary removal can be imposed on certain crewmen, stowaways, and suspected terrorists. Visa Waiver Program participants can be sent back without a hearing but without bar on reentry.

If the person is found otherwise inadmissible, the inspector has many options, depending in part on where the inspection occurs. The inspector may decide the person is eligible for a waiver of the ground of inadmissibility and admit him. At a land border point, the alien normally is refused physical entry and scheduled for a hearing before an Immigration Court at the border. At other ports, the alien may be taken into custody and detained pending a hearing before an Immigration Court. In some cases, the inspector may allow the alien to withdraw his application for admission (avoiding the prospect of a five-year bar on re-entry) or may "parole" the alien into the U.S. for further inspection at a CBP "deferred inspection" site or for a hearing to take place at an Immigration Court near the port or near the person's destination in the U.S.

In most cases involving an unfortunate result, the inspector generates some paperwork for the person's "alien file," and in most cases some papers are served on the alien. These papers should be carefully retained for an immigration attorney's review. Often the inspector takes a statement from the applicant and asks the applicant to sign it. The applicant should carefully consider such a request and should seriously consider attempting to consult counsel, at least by telephone, before engaging in an interview or signing a transcript.

In almost any situation, an inadmissible applicant may express a desire to seek asylum in the U.S. and obtain at least a cursory "credible fear" interview with a USCIS Asylum Officer. If credible fear is found (and almost always is found unless the applicant insists he has no fear of return), the applicant usually is held in jail-like detention pending a hearing before an Immigration Court. If the applicant can establish his identity (often difficult for someone who used false documents to arrive in the U.S.), the absence of a danger to the community, and a likelihood of appearing at his hearing, he may be released on "parole" pending the court hearing. The conditions of detention, the frequency of parole and the receptivity of the judge to asylum claims vary among the different ports of entry to the U.S.

An "arriving alien" who is ordered removed normally is returned to the country he came from at the expense of the carrier that brought him. The carrier often pays a fine to DHS for having brought an admissible alien, which explains why carriers are increasingly careful about screening travelers before they embark on transportation to the U.S.

Nationals from a designated list of countries, along with other people individually selected by immigration inspectors, must now comply with "special registration" procedures during inspection. This is also referred to as "NSEERS." Those countries include Iran, Iraq, Libya, Sudan, Syria, Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morocco, North Korea, Oman, Qatar, Somalia, Tunisia, United Arab Emirates, Yemen, Pakistan, Saudi Arabia, Bangladesh, Egypt, Indonesia, Jordan and Kuwait. The regulations require nonimmigrant nationals of these countries to provide notifications to immigration authorities of changes of address, employment, or school (to the extent not reflected in a SEVIS entry by the school) on form AR-11SR. Initial requirements for 30-day and one-year personal appearances at local immigration offices have been eliminated, but individuals still may be required to appear as instructed. Special registrants are required to report in person to an immigration officer at one among a limited list of designated ports when departing the U.S. For those registered during inspection, a package of detailed information about compliance is provided and should be carefully reviewed, and this package includes the designated ports for departure that all registrants must use.

Maintaining Status & Allowable Activities

Once an alien enters the U.S. in a nonimmigrant status, he must continue to carry on any specific activities for which he obtained the status (i.e., full-time study, approved work, etc.), avoid any unauthorized activities (especially work), avoid becoming subject to any deportability grounds, and notify USCIS and/or his school or exchange program in writing within ten days of any change of address in the U.S. (using Form AR-11 or AR-11SR, or by filing one of many forms concerning an extension or change of status). Otherwise, he becomes deportable and ineligible to extend or change that nonimmigrant stay. There may be other consequences, such

as becoming ineligible to adjust status to permanent residence within the U.S. even if he becomes otherwise eligible.

Departure or Extension/Change

At the time of departure from the U.S., normally the visitor should surrender any I-94 or I-94W departure card to check-in representatives of the airline or other carrier, who passes it on to DHS for entry into a database where departure can be matched with the entry card to reflect that the visitor in fact did depart. Land travelers often find no one to collect the I-94. Anyone who failed to surrender the I-94 effectively when departing must send it by mail to a CBP address with evidence of actual departure. Those departing to Mexico or Canada for less than 30 days should in fact hold on to their I-94 card and present and keep it upon return.

Failure to depart by the time shown on the I-94 card can have huge consequences:

6. Immediate deportability.
7. Inability to extend the stay or change to another status within the U.S.
8. Possible ineligibility to adjust status to permanent residence.
9. Immediate, automatic cancellation of any visa used to enter (even without any notation canceling it), and requirement to obtain any subsequent visa – ever – at the U.S. Consulate in the alien's country of nationality. There are many technical exceptions to this cancellation rule, and someone potentially subject to it should consult a U.S. immigration lawyer before seeking new entry.
10. If the "overstay" continues for 180 days/one year, subjection to a three/ten-year bar on any reentry following the next departure from the U.S. This brutal consequence also has many exceptions, and a U.S. immigration lawyer should be consulted.

It should be apparent from the above list that "overstay" is to be avoided, and anyone facing a deadline on departure should consult a U.S. immigration lawyer. It is conceivable that an unmatched entry card or other USCIS or consular encounter can lead to the person being added to a "lookout" list in the U.S. government's increasingly interrelated databases. One should be prepared, when seeking admission, to prove the timeliness of all prior departures, especially any departures during which the I-94 was not surrendered.

Most nonimmigrants may seek to extend their stay in the same visa classification or to change status (with an extension of stay) in a new visa classification. This can be done even if the visa used to enter has expired. As long as the application is received by the USCIS by or before the date of the existing stay's expiration, the alien may remain in the U.S. to await the decision, but in most cases the alien may not start any new employment requested until approval of the new filing is approved. The papers are almost always submitted to a USCIS "service center" by mail. The type of papers to be submitted to USCIS vary depending on the visa classification sought and whether the person is the "principal alien" or an accompanying "derivative." Usually the USCIS form involved is either I-129 or I-539. Normally, electronic filing with USCIS is not advisable, but it can be reassuring to obtain electronic receipt if the filing must take place at the last minute.

While a six-month extension of a tourist's stay can be simple enough to prepare, even those applications can have pitfalls for the unwary, and any work-authorizing status should be handled by a competent immigration attorney.

Avoiding Deportability

Apart from observing the limitations on the duration of stay and allowable activities, a nonimmigrant must avoid becoming subject to one of the many "deportability grounds" that are akin to, but still different from, the inadmissibility grounds. Especially since an alien can be deportable for having been inadmissible when (mistakenly) admitted, both sets of grounds are almost always potentially at issue. The most common ground for nonimmigrants, other than overstay, unauthorized employment and failure to maintain the activities

necessary for the classification, is convictions of one or more crimes. Anyone who may have become subject to deportability, or who is given notice to Appear before an Immigration Court, should promptly consult an immigration lawyer.

Special Registration

Nationals from a designated list of countries, along with other people individually selected by immigration inspectors, must now comply with "special registration" procedures during inspection. Those countries include Iran, Iraq, Libya, Sudan, Syria, Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morocco, North Korea, Oman, Qatar, Somalia, Tunisia, United Arab Emirates, Yemen, Pakistan, Saudi Arabia, Bangladesh, Egypt, Indonesia, Jordan and Kuwait. The regulations require nonimmigrant nationals of these countries to provide notifications to immigration authorities of changes of address, employment, or school (to the extent not reflected in a SEVIS entry by the school) on form AR-11SR. Initial requirements for thirty-day and one-year personal appearances at local immigration offices have been eliminated, but individuals still may be required to appear as instructed. Special registrants are required to report in person to an immigration officer at one among a limited list of designated ports when departing the U.S. For those registered during inspection, a package of detailed information about compliance is provided and should be carefully reviewed, and this package includes the designated ports for departure that all special registrants must use.

Visa Waiver

Certain visitors (tourists and business visitors) may enter under one of several waiver programs allowing entry without any visa.

Canadian citizens, who need no visa to enter and often receive no departure card with the understanding that they are allowed a six-month stay. Thus, at the present time they can enter by land or sea with as little as a photo I.D. and birth certificate (which often doubles as a photo I.D.) or other evidence of Canadian citizenship (or British citizenship and Canadian residence). If entering the U.S. from outside the Western Hemisphere, even a Canadian citizen requires a passport.

Under the recent Western Hemisphere Travel Initiative (WHTI), however, all travelers by air to and from the Americas, the Caribbean, and Bermuda are now required to have a passport or other accepted document that establishes the bearer's identity and nationality to enter or re-enter the United States. Other accepted documents include the new State Department "passport card," an "enhanced driver's license" now offered by certain border states in cooperation with DHS, a trusted traveler program card (FAST, NEXUS, or SENTRI), a Military ID with official travel orders, or a U.S. Merchant Mariner Document. On June 1, 2009, the passport requirements of WHTI extended to travelers entering the U.S. by land or sea. Canadian citizens are eligible to make business visits for a number of purposes listed in the North American Free Trade Agreement (NAFTA), but that list is only reflective of the activities appropriate for a B-1 business visitor from any country.

Landed immigrants in Canada and British subjects residing in Canada, who may seek a border crossing card with varying conditions in lieu of a visa. In the past, Mexicans have been able to obtain border crossing cards, which allowed visits of 72 hours within 25 (sometimes 75) miles from the border, but Congress has invalidated those cards, and now Mexicans generally obtain a "laser visa" that doubles as a visa and a border crossing card.

Certain other persons generally not requiring visas, including certain people entering from Guam.

Visa Waiver Program participants. Citizens of 35 countries designated under the visa waiver program may use their passports without visa to enter the U.S. for 90 days. Before traveling they must register online with CBP's Electronic System for Travel Authorization (ESTA) program. After Customs and Border Patrol inspection at a port-of-entry they receive a green "I-94W" card (not to be confused with a "Green Card" for permanent

residence!). The trade-off for the convenience of not having to obtain a visa is the set of limitations described on the back of the I-94W: no right to a hearing if the immigration inspector finds the person inadmissible (even on the basis that the person has not convinced the officer of his "nonimmigrant intent"), and no eligibility for extension of stay or for change of status. The eligible countries are Andorra, Austria, Australia, Belgium, Brunei, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Moldova, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovak Republic, Slovenia, Republic of South Korea, Spain, Sweden, Switzerland and The United Kingdom.

All Visa Waiver Program entrants must have a "machine readable passport," which contains two lines of text as letters, numbers and chevrons (<<<) at the bottom of the personal information page, along with a photo that need not be digital. Certain additional requirements for Visa Waiver Program requirements have been imposed based on when the passport was issued:

- 10/26/05 through 10/25/06: A digital photograph printed on the passport data page is required OR an integrated chip containing information from the data page ("e-passport"). A digital photo is one that is printed on the page, not a photo that is glued or laminated into the passport.
- 10/26/06: Machine-readable passports issued or renewed/extended on or after this date are required to be e-passports. An e-passport has an integrated computer chip that holds the same information printed on the passport's data page: the holder's name, date of birth and other biographic information. These e-passports must comply with international technical standards established by the International Civil Aviation Organization.
- Temporary, emergency, official and diplomatic passports are exempted from digital photo and electronic chip requirements, but must be machine-readable. This rule applies to all VWP countries except for Germany. Temporary or emergency German passports are not valid for VWP travel, and must contain a visa for admission to the United States.
- VWP travelers with non-compliant passports do not have a valid travel document for admission under the VWP, and will need to obtain a visa to travel to the United States.
- Travelers from recently added countries must have an e-passport, regardless of issuance date. Those countries include Czech Republic, Estonia, Hungary, Latvia, Lithuania, Moldova, Slovak Republic and Republic of South Korea.