

## US Government: Confused?

Some things in life are complicated, some over-complicated. And then there are those things so messed up that they defy all sense, logic comprehension. Welcome to American immigration law.

In principle, the guidelines given to travellers seem reasonably straight forward. But it's the small print that can get you, and even more so, the 'invisible' print.

This is the problem with American immigration law. It's all so screwed-up that it's open to misinterpretation and abuse by those administering aspects of the law. What may be even worse, is that some immigration officials don't even understand or know what some of the simpler rules actually mean.

Thanks to an over-zealous President, a person with a deep-rooted neurosis about the security of his country, he has presided over the increasing list of rules and regulations that have overloaded immigration law. What an atrocious way to run a country.

### The basic rules

Going to America? US Embassy's website in the UK ("Embassy website") gives quite extensive advice, but when needing to go into detail, omits important links to required information. Where possible, our website will give them. This is what appears on the Embassy website in the UK ...

#### "Nonimmigrant Visas

The following provides information on visa requirements for travelers to the United States who wish to visit, work or study for a temporary period. The type of visa required will depend on the purpose of your travel. Many travelers seeking to enter the U.S. for business or tourism for less than 90 days will be eligible to travel to the United States visa free under the Visa Waiver Program.

#### Method of Application

With limited exceptions, nonimmigrant visa applicants aged 14 to 79 are required to schedule an appointment for an interview with a U.S. consular officer. Interviews are by appointment only. The Embassy does not accept walk-in applications.

#### Processing Times

The average visa processing time for successful applicants is five business days, during which time the applicant's passport must remain with the Embassy. Applicants who are advised at the visa interview that their application requires additional processing should allow at least 8 weeks for this stage of the application process. Once processing is completed, the applicant will be contacted for the passport. A further four weeks should be allowed for the visa to be issued and the passport returned.

Applicants who are advised at the time of their interview that action on their application has been suspended under Section 221(g) of the Immigration and Nationality Act should allow a minimum of 10 - 15 business days for their application to be processed once they submit the missing documents to the Embassy."



For details on "Section 221(g) of the Immigration and Nationality Act" should see the following link:

[http://travel.state.gov/visa/frvi/ineligibilities/ineligibilities\\_1364.html](http://travel.state.gov/visa/frvi/ineligibilities/ineligibilities_1364.html)

Be warned though, this link is crammed full of legalese and will likely tie you up in knots. Having said that, and unless you are a serious criminal, it's not going to radically affect your Visa application. Motoring offences are usually ignored, but being arrested, even when you are totally innocent (mistaken identity, etc.) can be a handicap. The American attitude of being guilty under proven innocent, and then still suspected of being guilty regardless, is going to put the onus upon the Visa applicant to prove they are nothing less than a saint.

If you are a complete Masochist, then you may wish to read ALL of the:

[Immigration and Nationality Act](#)

[Code of Federal Regulations - Chapter 8](#) Also see: [Section 217.4](#) [Visa Waiver Programme]

This is why some (read lots?) of people travel to the US on the Visa Waiver Programme yet have criminal records. The thinking here is that even if you think you should be allowed to visit the US, being honest about your background can cause more trouble than it's worth.

### **Details about the Visa Waiver Programme**

If you have not been bamboozled by all you may have read on the previous two links, you may wish to read further.

#### **"Details about the Visa Waiver Program**

Most visitors to the United States enter the country as tourists. With the introduction of visa free travel to citizens of 27 countries, it is now possible for many travelers, including British citizens, to enter the United States without a visa under the Visa Waiver Program (WVP). Visa free travel is also available to qualified travelers who enter the United States on business or in transit.

Citizens of the following countries: Andorra, Australia, Austria, Belgium Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom may travel visa free under the Visa Waiver Program if they meet ALL of the following requirements:

- The traveler is a citizen of one of the countries named above, traveling on a valid, machine readable or e-passport with an electronic chip. Please check the validity of your passport by following this link. Failure to determine that your passport qualifies for the VWP may result in you being denied boarding by the airline.

Note: A passport indicating that the bearer is a British Subject, British Dependent Territories Citizen, British Overseas Citizen, British National (Overseas) Citizen, or British Protected Person does not qualify for travel without a visa. A passport which states holder has Right of Abode or indefinite leave to remain in the United Kingdom does not qualify for visa free travel;

- Traveling for business, pleasure or transit only;
- Staying in the United States for 90 days or less;

Plus, if entering the United States by air or sea is,

- Holding a return or onward ticket. If traveling on an electronic ticket, a copy of the itinerary must be carried for presentation to U.S. immigration at the port of entry. Note: Travelers with onward tickets terminating in Mexico, Canada, Bermuda or the Caribbean Islands must be legal permanent residents of these areas;
- Entering the United States aboard an air or sea carrier that has agreed to participate in the program. This includes aircraft of a U.S. corporation that has entered into an agreement with the Department of Homeland Security to carry passengers under the Visa Waiver Program. Note: Other private or official aircraft or vessels do not meet this requirement; and
- In possession of a completed form I-94W, obtainable from airline and shipping companies;

Or, if entering the United States by land from Canada or Mexico,

- Is in possession of a completed form I-94W, issued by the immigration authorities at the port of entry, and a \$6.00 fee, payable only in U.S. dollars.

To assist you in determining if you may travel under the Visa Waiver Program we have constructed a Visa Waiver Wizard.

**Important:** Some travelers may not be eligible to enter the United States visa free under the VWP. These include people who have been arrested, even if the arrest did not result in a criminal conviction, those with criminal records, (the Rehabilitation of Offenders Act does not apply to U.S. visa law), certain serious communicable illnesses, those who have been refused admission into, or have been deported from, the United States, or have previously overstayed on the VWP. Such travelers must apply for special restricted visas. If they attempt to travel without a visa, they may be refused entry into the United States.

### **Refused a Visa**

While travelers who have been refused a visa under the provisions of Section 221(g) or 214(b) of the Immigration and Nationality Act are not ineligible to travel visa (sic) under the Visa Waiver Program, they will be questioned by an immigration official at the U. S. port of entry regarding the refusal by the Embassy or Consulate.

The traveler should carry with him or her evidence of his or her intention to depart the United States at the end of the visit. This is generally satisfied by furnishing evidence of strong social and economic ties to the traveler's 's place of permanent residence. There is no set form that this should take as each person's circumstances differ.

If the immigration officer is not satisfied that the traveler meets the qualifications for nonimmigrant status, the traveler will be denied entry.

## Transit under the Visa Waiver Program

Travelers who qualify for visa free travel under the Visa Waiver Program are eligible to transit the United States. Application for entry is made on the arrival/departure form I-94W provided by the airline or shipping company. If transiting the United States to a destination in Canada, Mexico or the adjacent islands, the traveler may re-enter the United States on the return journey using any mode of transport, as long as the total visit, including both periods of time spent in transit and in Canada, Mexico or the adjacent islands, does not exceed 90 days. If transiting to a destination outside of Canada, Mexico, or the adjacent islands, the return journey must be on a participating carrier, but need not be within 90 days, as the traveler will be required to make a new application for admission and therefore, required to complete a new arrival/departure form, I-94W. Travelers transiting the United States to take up residence in Mexico, Canada, Bermuda or the Caribbean Islands must be legal permanent residents of these areas.

Important reminder Visa-free travel does not include those who plan to study, work or remain more than 90 days. Such travelers need visas. If an immigration official has reason to believe that a visa-free traveler is going to study, work or stay longer than 90 days, the officer will refuse to admit the traveler."

### Salient Points:

[1] "Holding a return or onward ticket ...".

Essentially, and unless you have a very good reason, you will need to show that you have no intention of staying in the US. However, from personal experience, this has not always proven to be true. When I was travelling to the US, one of my tickets was US to the UK, and back from the UK to the US. This was accepted by immigration in the US. The reasoning I gave, which is perfectly true, was that it was cheaper to purchase return tickets in the US in this way.

[2] "Some travelers may not be eligible to enter the United States visa free under the VWP. These include people who have been arrested, even if the arrest did not result in a criminal conviction ...".

You can travel to the US even if you have previously been convicted of a criminal offence. This includes declaring such an offence to an immigration officer. I know from experience, that when I was fined for 'criminal damage' of some property during a protest against a company (ironically, acting illegally), I was advised by the US Embassy to travel on the Visa waiver Programme regardless.

It just shows that the advice given to travellers to the Us is not always upheld or accurate. Entry to the US can then be determined arbitrarily - hardly a satisfactory state of affairs if you are refused a Visa but are still told that you can travel.



Confusion is setting in ... but it gets worse ...

### Unbelievable - quite literally!

Select any immigration official in any capacity in any office, whether it be a Port of Entry, Immigration Office or Embassy. You will be told something different, or wrong, at each one.

## **I lead by example ...**

My meetings with US Immigration:

[1] The first was in November, 2004. It was the 13th and I was crossing the border by land with my American girlfriend. We were interviewed by a very amiable Hawaiian official who let us through. A few questions, a short interview, that was it.

[2] The second was at the US Embassy in London in August, 2006. I've already covered this matter, so you will recall I was refused a Visa - but told to travel on the Visa waiver Programme. Madness.

[3] The third was at Seattle International Airport ("SeaTac") where I had to tackle a rather feisty female official. She only relented and let me in when another officer intervened. Ironically, the previous applicant was within earshot and I listened to what he was saying.

He appeared to be Russian and the only word he knew was 'No'. Every time he was asked a question, this is mostly how he replied. Add a few shrugs of the shoulder, and this guy was totally uncooperative. If anyone should have been given a hard time, it was this guy.

He could not tell immigration officials where he was staying in the US, he could not say why he was there, etc., yet he was let through!

I was fully cooperative and could give the name and address of the person I would be staying with. I had sufficient funds to keep me going and a good reason to be in the US. My treatment was worse because I could speak English. It appears if you do not speak English, you have a better chance of entering the US.

[4] The fourth was again at SeaTac where again I was interviewed by immigration. Notice I say 'interviewed' as the officials here seem more civilised than those at other airports. After explaining the purpose of my visit, I was allowed in.

[5] The fifth was at the main Immigration Office in Portland. I went in and asked about the definition of a 'non-contiguous country'. This is because visitors to the US on the Visa Waiver Programme cannot leave to a contiguous country and then return to the US. Contiguous countries are generally those bordering the US, islands in the Caribbean Sea, and some countries with a coastline on the Caribbean Sea. A full list is available.

I asked the immigration official in Portland if I could travel to a contiguous country, namely Canada, after my 90-day Visa Waiver Programme stay had ended in the US - and then return for another 90 days in the US. Although (and very wrongly) I was told this was OK, I was later given some photocopies of immigration rules which contradicted the officer's advice.

[6] The sixth was my last visit to SeaTac. Having been through twice before, I was allowed in without being interviewed. If only I had stuck to this route, I would likely have been OK. I generally like the officials at SeaTac. They are quite a decent bunch.

[7] The seventh was at Chicago O'Hare international Airport. I was through passport control again with no difficulty and heading for my connecting flight. I then, quite stupidly (though should have been harmlessly), just turned around to ask a simple question about countries neighbouring the US. From this point, I was given a hard time by an irate officer who was assisted by an equally threatening accomplice. Regardless, I was allowed to proceed after this unwelcome and undeserved tirade.

[8] The eighth was at San Francisco International Airport. You can read about this ordeal at: [My Story](#)

## **The most IMPORTANT point**

I would defy anyone to locate a rule, or a law, or a guideline, which clearly states that you can stay for 90 days on the Visa Waiver Programme in the US and not return again for a specific period of time.

THERE IS NO GUIDANCE. For all intense purposes, there is NOTHING which states that you can have 90 days in the US, and then come back continuously for other 90 day stays.

The only guideline for immigration officials is that if it is suspected you are 'living' in the US, they can stop you abusing the Visa Waiver Programme. But even when you are in the US, even if ONLY one trip in a lifetime, you are, effectively, living in the US. What is CRITICAL, is what you do while you are there.

While it may appear that regular visits may be seem to be contrary to the spirit of the Visa Waiver Programme, there is NO law that says you cannot keep visiting. And as immigration officials are so keen on exploiting the rule book, and using LAWS to discriminate against travellers, they should also equally 'play fair'.

Regular visitors to the US, who are going to be spending all their money in that country, should not be selected for discriminatory treatment. IF the American Government wants to stop frequent visitors, they should CLEARLY define laws that specify the number of visits that a tourist can make under the Visa Waiver Programme - either indicating a specified number of days between visits or a limit on the number of trips that can be made in the space of (for example) one year.

It is NOT satisfactory to allow immigration officials to allow multiple trips and then suddenly bar the traveller from entering the country, thus causing an insurmountable of distress and financial loss.

## **Conclusion**

So, what sense can anyone make of all this? I repeat it's all purely arbitrary. It's just a matter of whether you get lucky or not. It's nothing to do with immigration law, it's nothing to do correct procedures, it's nothing to do with decent humane behaviour. Immigration to the US as a 'non-immigrant' tourist, or otherwise, can either be the best of all worlds, or the worst possible nightmare.

I repeat: If it weren't so serious, it would be funny. It would make a good old-fashioned West End type farce. Imagine (if you dare) Immigration officials scrambling around with their pants around their ankles, absolute chaos and misunderstandings. But it's not funny, not in any sense. Arbitrary rulings and decisions are acts of criminality.

Will President Bush change laws that will help travellers rather than illegally or immorally discriminate against them? No chance. Bush wants to make it more difficult to get into the US and may just end the Visa Waiver Programme - at least for those not privileged with some status, possibly political or financial.

**UPDATE:** New President, new rules? It appears not. More later.