



UNITED STATES

Holiday Travel Planning for Foreign Nationals
November 5, 2009

The winter holiday season is approaching and many foreign nationals are beginning to make plans to travel abroad. Now is the right time for these individuals to make sure that they are prepared, from an immigration perspective, to depart and reenter the United States. Understanding their immigration obligations can help foreign employees minimize the possibility that they'll be delayed in returning to the United States.

What International Travelers Should Do Now

If you're a foreign national who is planning to travel overseas this holiday season, make sure to do the following:

- **Check your passport to make sure it is valid.** In general, your passport must be valid for at least six months beyond the expiration of your period of admission to the United States, to ensure that you will be able to leave the United States at the end of your stay and proceed to your home country or another country. There are some exceptions to this rule. Under international treaties, many countries have an agreement with the U.S. whereby a passport is deemed valid for an additional six months past its expiration date so that the passport holder can return to his or her country of citizenship. If you have questions about whether your passport is valid for reentry, contact your Fragomen professional.
- **Check your visa to make sure that it is valid for reentry to the United States.** When you come back to the United States after international travel, the visa stamp in your passport must reflect your current nonimmigrant visa status, it must be unexpired, and, if the visa has a limited number of entries, it must have a remaining valid entry available on the intended date of reentry to the United States. Under some circumstances, if you are making only a short trip of 30 days or less to Canada or Mexico and have a valid Form I-94, your visa is deemed automatically revalidated upon reentry. But if you have applied for a new visa while in Canada or Mexico, or you are a citizen or national of Cuba, Iran, Sudan or Syria, your visa won't be automatically revalidated and you won't be readmitted to the United States without obtaining a new visa abroad. Canadian citizens are not generally required to have a valid visa to enter the United States, unless they are E-1 or E-2 nonimmigrants.
- **If you are an adjustment applicant, find out whether you need advance permission to travel before you leave the U.S.** If you are an applicant for adjustment of status to permanent residence, you must in some cases obtain advance permission to travel – known as advance parole – in order to leave the U.S. while your adjustment application is pending. If you already have a valid H-1B, H-4, L-1A, L-1B, or L-2 visa, you may reenter the United States on that visa, without the need for an advance parole. Note, though, that U.S. Citizenship and Immigration Services (USCIS) policies are unresolved when it comes to H and L nonimmigrant family members who have been granted employment authorization as adjustment applicants and have used the authorization to work. Until official government guidance is issued, H and L family members who have worked in the United States should be cautious when traveling, and obtain and use an advance parole for reentry to the United States.
- **Is a change or extension of your status pending with U.S. Citizenship and Immigration Services?** Traveling abroad while your extension application is pending should not cause USCIS to consider the application abandoned. But if a change of status is pending for you, you should avoid international travel until it is adjudicated. USCIS will consider the change of status request to be abandoned if you depart the United States while it is pending. Though the underlying nonimmigrant petition could still be approved, you would need to depart the United States, apply for and obtain a new visa, and reenter to take up the new status.
- **If you're planning business or tourist travel to the United States under the Visa Waiver Program, make sure you comply with program requirements.** The Visa Waiver Program (VWP) allows citizens and nationals of designated countries to enter the United States for up to 90 days of business or tourist travel without a visa, provided that they meet specific registration and passport requirements. If you're planning to travel under the VWP, you will need to have a valid registration in the Electronic System for Travel Authorization (ESTA) at least 72 hours before your departure for the United States. You can register at <https://esta.cbp.dhs.gov/>. If you have already registered in ESTA for a previous Visa Waiver Program trip, you don't need to re-register as long as your registration is still valid and you have not obtained a new passport since your registration. Also, make sure that your passport meets Visa Waiver Program requirements. Find out more about VWP passport and ESTA requirements [here](#).

What to Expect at U.S. Consulates and the U.S. Border

- **Plan for the possibility of visa delays at U.S. consulates.** During the holiday travel season, U.S. consulates overseas are busier than ever processing visa applications and may have reduced hours around the holidays. If you will be applying for a new visa while you are overseas, check the U.S. consulate or embassy where you will be applying for information on application procedures and processing times.

See <http://usembassy.gov/> for up-to-date consular contact information. See

http://www.travel.state.gov/visa/tempvisitors_wait.php for information on projected visa appointment and processing times.

- **Plan for the possible security clearance delays during the visa application process.** The U.S. consulate may require your visa application to undergo an additional security checks based on your country of nationality, whether your name is similar to an individual listed in a U.S. government security database, if your job or degree is in a high technology field, or for other reasons. If a security clearance is required, your visa can't be issued until the clearance has been completed. Because this process is confidential, the consulate will not confirm that a security clearance is underway but may say that "administrative processing" is required. Security clearances can take anywhere from a few days to several weeks or more. In general, the government will not expedite a security clearance.
- **At the border, be prepared for security screening procedures.** When you return to the United States, you will need to go through the US-VISIT system, a check-in process where your fingerprints, photograph and travel documents are scanned against U.S. national security and police databases. You may also be subject to intensive questioning about your immigration status, travel history, the purpose of your visit, background, employment and other issues. It is important to remain patient during these procedures and answer all questions clearly. If you don't understand a question, ask for clarification. If you are detained at the port of entry, you're not entitled to legal representation, but you should ask permission to call Fragomen offices if the need arises. You should simply explain that contacting Fragomen will allow us in turn to contact your employer if further information is required.

For More Information on Travel and Immigration Requirements

On our firm's website, you will find detailed information on international travel and immigration obligations. If you have specific questions about your travel plans, please contact your designated Fragomen professional.