

8 CFR 217 Visa Waiver Program

Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.

Source: 53 FR 24901, June 30, 1988, unless otherwise noted.

§ 217.1 Scope.

The Visa Waiver Pilot Program (VWPP) described in this section is established pursuant to the provisions of section 217 of the Act.

[62 FR 10351, Mar. 6, 1997]

§ 217.2 Eligibility.

(a) *Definitions.* As used in this part, the term:

Carrier refers to the owner, charterer, lessee, or authorized agent of any commercial vessel or commercial aircraft engaged in transporting passengers to the United States from a foreign place.

Designated country refers to 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. The United Kingdom refers only to British citizens who have the unrestricted right of permanent abode in the United Kingdom (England, Scotland, Wales, Northern Ireland, the Channel Islands and the Isle of Man); it does not refer to British overseas citizens, British dependent territories' citizens, or citizens of British Commonwealth countries. After May 15, 2003, citizens of Belgium must present a machine-readable passport in order to be granted admission under the Visa Waiver Program.

Round trip ticket means any return trip transportation ticket in the name of an arriving Visa Waiver Pilot Program applicant on a participating carrier valid for at least 1 year, electronic ticket record, airline employee passes indicating return passage, individual vouchers for return passage, group vouchers for return passage for charter flights, and military travel orders which include military dependents for return to duty stations outside the United States on U.S. military flights. A period of validity of 1 year need not be reflected on the ticket itself, provided that the carrier agrees that it will honor the return portion of the ticket at any time, as provided in Form I-775, Visa Waiver Pilot Program Agreement.

(b) *Special program requirements—(1) General.* In addition to meeting all of the requirements for the Visa Waiver Pilot Program specified in section 217 of the Act, each applicant must possess a valid, unexpired passport issued by a designated country and present a completed, signed Form I-94W, Nonimmigrant Visa Waiver Arrival/Departure Form.

(2) *Persons previously removed as deportable aliens.* Aliens who have been deported or removed from the United States, after having been determined deportable, require the consent of the Attorney General to apply for admission to the United States pursuant to section 212(a)(9)(A)(iii) of the Act. Such persons may not be admitted to the United States under the provisions of this part notwithstanding the fact that the required consent of the Attorney General may have been secured. Such aliens must secure a visa in order to be admitted to the United States as nonimmigrants, unless otherwise exempt.

(c) *Restrictions on manner of arrival—(1) Applicants arriving by air and sea.* Applicants must arrive on a carrier that is signatory to a Visa Waiver Pilot Program Agreement and at the time of arrival must have a round trip ticket that will transport the traveler out of the United States to any other foreign port or place as long as the trip does not terminate in contiguous territory or an adjacent island; except that the round trip ticket may transport the traveler to contiguous territory or an adjacent island, if the traveler is a resident of the country of destination.

(2) *Applicants arriving at land border ports-of-entry.* Any Visa Waiver Pilot Program applicant arriving at a land border port-of-entry must provide evidence to the immigration officer of financial solvency and a domicile abroad to which the applicant intends to return. An applicant arriving at a land-border port-of-entry will be charged a fee as prescribed in §103.7(b)(1) of this chapter for issuance of Form I-94W, Nonimmigrant Visa Waiver Arrival/Departure Form. A round-trip transportation ticket is not required of applicants at land border ports-of-entry.

(d) *Aliens in transit.* An alien who is in transit through the United States is eligible to apply for admission under the Visa Waiver Pilot Program, provided the applicant meets all other program requirements.

[62 FR 10351, Mar. 6, 1997, as amended at 62 FR 50999, Sept. 30, 1997; 64 FR 42007, Aug. 3, 1999; 67 FR 7945, Feb. 21, 2002; 68 FR 10957, Mar. 7, 2003]

§ 217.3 Maintenance of status.

(a) *Satisfactory departure.* If an emergency prevents an alien admitted under this part from departing from the United States within his or her period of authorized stay, the district director having jurisdiction over the place of the alien's temporary stay may, in his or her discretion, grant a period of satisfactory departure not to exceed 30 days. If departure is accomplished during that period, the alien is to be regarded as having satisfactorily accomplished the visit without overstaying the allotted time.

(b) *Readmission after departure to contiguous territory or adjacent island.* An alien admitted to the United States under this part may be readmitted to the United States after a departure to foreign contiguous territory or adjacent island for the balance of his or her original Visa Waiver Pilot Program admission period if he or she is otherwise admissible and meets all the conditions of this part with the exception of arrival on a signatory carrier.

§ 217.4 Inadmissibility and deportability.

(a) *Determinations of inadmissibility.* (1) An alien who applies for admission under the provisions of section 217 of the Act, who is determined by an immigration officer not to be eligible for admission under that section or to be inadmissible to the United States under one or more of the grounds of inadmissibility listed in section 212 of the Act (other than for lack of a visa), or who is in possession of and presents fraudulent or counterfeit travel documents, will be refused admission into the United States and removed. Such refusal and removal shall be made at the level of the port director or officer-in-charge, or an officer acting in that capacity, and shall be effected without referral of the alien to an immigration judge for further inquiry, examination, or hearing, except that an alien who presents himself or herself as an applicant for admission under section 217 of the Act, who applies for asylum in the United States must be issued a Form I-863, Notice of Referral to Immigration Judge, for a proceeding in accordance with §208.2(b)(1) and (2) of this chapter.

(2) The removal of an alien under this section may be deferred if the alien is paroled into the custody of a Federal, State, or local law enforcement agency for criminal prosecution or punishment. This section in no way diminishes the discretionary authority of the Attorney General enumerated in section 212(d) of the Act.

(3) Refusal of admission under paragraph (a)(1) of this section shall not constitute removal for purposes of the Act.

(b) *Determination of deportability.* (1) An alien who has been admitted to the United States under the provisions of section 217 of the Act and of this part who is determined by an immigration officer to be deportable from the United States under one or more of the grounds of deportability listed in section 237 of the Act shall be removed from the United States to his or her country of nationality or last residence. Such removal shall be determined by the district director who has jurisdiction over the place where the alien is found, and shall be effected without referral of the alien to an immigration judge for a determination of deportability, except that an alien admitted as a Visa Waiver Pilot Program visitor who applies for asylum in the United States must be issued a Form I-863 for a proceeding in accordance with §208.2(b)(1) and (2) of this chapter.

(2) Removal by the district director under paragraph (b)(1) of this section is equivalent in all respects and has the same consequences as removal after proceedings conducted under section 240 of the Act.

(c)(1) *Removal of inadmissible aliens who arrived by air or sea.* Removal of an alien from the United States under this section may be effected using the return portion of the round trip passage presented by the alien at the time of entry to the United States as required by section 217(a)(7) of the Act. Such removal shall be on the first available means of transportation to the alien's point of embarkation to the

United States. Nothing in this part absolves the carrier of the responsibility to remove any inadmissible or deportable alien at carrier expense, as provided in the carrier agreement.

(2) *Removal of inadmissible and deportable aliens who arrived at land border ports-of-entry.* Removal under this section will be by the first available means of transportation deemed appropriate by the district director.

[53 FR 24901, June 30, 1988, as amended at 56 FR 32953, July 18, 1991; 62 FR 10351, Mar. 6, 1997]

§ 217.5 [Reserved]

§ 217.6 Carrier agreements.

(a) *General.* The carrier agreements referred to in section 217(e) of the Act shall be made by the Commissioner on behalf of the Attorney General and shall be on Form I-775, Visa Waiver Pilot Program Agreement.

(b) *Termination of agreements.* The Commissioner, on behalf of the Attorney General, may terminate any carrier agreement under this part, with 5 days notice to a carrier, for the carrier's failure to meet the terms of such agreement. As a matter of discretion, the Commissioner may notify a carrier of the existence of a basis for termination of a carrier agreement under this part and allow the carrier a period not to exceed 15 days within which the carrier may bring itself into compliance with the terms of the carrier agreement. The agreement shall be subject to cancellation by either party for any reason upon 15 days' written notice to the other party.

[62 FR 10352, Mar. 6, 1997]

§ 217.7 Electronic data transmission requirement.

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(a) An alien who applies for admission under the provisions of section 217 of the Act after arriving via sea or air at a port of entry will not be admitted under the Visa Waiver Program unless an appropriate official of the carrier transporting the alien electronically transmitted to Customs and Border Protection (CBP) passenger arrival manifest data relative to that alien passenger in accordance with 19 CFR 4.7b or 19 CFR 122.49a. Upon departure from the United States by sea or air of an alien admitted under the Visa Waiver Program, an appropriate official of the transporting carrier must electronically transmit to CBP departure manifest data relative to that alien passenger in accordance with 19 CFR 4.64 and 19 CFR 122.75a.

(b) If a carrier fails to submit the required electronic arrival or departure manifests specified in paragraph (a) of this section, CBP will evaluate the carrier's compliance with immigration requirements

as a whole. CBP will inform the carrier of any noncompliance and then may revoke any contract agreements between CBP and the carrier. The carrier may also be subject to fines for failure to comply with manifest requirements or other statutory provisions. CBP will also review each Visa Waiver Program applicant who applies for admission and, on a case-by-case basis, may authorize a waiver under current CBP policy and guidelines or deny the applicant admission into the United States.

8 CFR 2121(e)

(e) *Aliens entering Guam pursuant to section 14 of Pub. L. 99–396, “Omnibus Territories Act.”* (1) A visa is not required of an alien who is a citizen of a country enumerated in paragraph (e)(3) of this section who:

- (i) Is classifiable as a visitor for business or pleasure;
- (ii) Is solely entering and staying on Guam for a period not to exceed fifteen days;
- (iii) Is in possession of a round-trip nonrefundable and nontransferable transportation ticket bearing a confirmed departure date not exceeding fifteen days from the date of admission to Guam;
- (iv) Is in possession of a completed and signed Visa Waiver Information Form (Form I–736);
- (v) Waives any right to review or appeal the immigration officer’s determination of admissibility at the port of entry at Guam; and
- (vi) Waives any right to contest any action for deportation, other than on the basis of a request for asylum.

(2) An alien is eligible for the waiver provision if all of the eligibility criteria in paragraph (e)(1) of this section have been met prior to embarkation and the alien is a citizen of a country that:

- (i) Has a visa refusal rate of 16.9% or less, or a country whose visa refusal rate exceeds 16.9% and has an established preinspection or preclearance program, pursuant to a bilateral agreement with the United States under which its citizens traveling to Guam without a valid United States visa are inspected by the Immigration and Naturalization Service prior to departure from that country;
- (ii) Is within geographical proximity to Guam, unless the country has a substantial volume of nonimmigrant admissions to Guam as determined by the Commissioner and extends reciprocal privileges to citizens of the United States;
- (iii) Is not designated by the Department of State as being of special humanitarian concern; and
- (iv) Poses no threat to the welfare, safety or security of the United States, its territories, or commonwealths.

Any potential threats to the welfare, safety, or security of the United States, its territories, or commonwealths will be dealt with on a country by country basis, and a determination by the Commissioner of the Immigration and Naturalization Service that a threat exists will result in the immediate deletion of that country from the listing in paragraph (e)(3) of this section.

(3)(i) The following geographic areas meet the eligibility criteria as stated in paragraph (e)(2) of this section: Australia, Brunei, Indonesia, Japan, Malaysia, Nauru, New Zealand, Papua New Guinea, Republic of Korea, Singapore, Solomon Islands, Taiwan (residents thereof who begin their travel in Taiwan and who travel on direct flights from Taiwan to Guam without an intermediate layover or stop except that the flights may stop in a territory of the United States enroute), the United Kingdom (including the citizens of the colony of Hong Kong), Vanuatu, and Western Samoa. The provision that flights transporting residents of Taiwan to Guam may stop at a territory of the United States enroute may be rescinded whenever the number of inadmissible passengers arriving in Guam who have transited a territory of the United States enroute to Guam exceeds 20 percent of all the inadmissible passengers arriving in Guam within any consecutive two-month period. Such rescission will be published in the Federal Register.

(ii) For the purposes of this section, the term *citizen of a country* as used in 8 CFR 212.1(e)(1) when applied to Taiwan refers only to residents of Taiwan who are in possession of Taiwan National Identity Cards and a valid Taiwan passport with a valid re-entry permit issued by the Taiwan Ministry of Foreign Affairs. It does not refer to any other holder of a Taiwan passport or a passport issued by the People's Republic of China.

(4) Admission under this section renders an alien ineligible for:

(i) Adjustment of status to that of a temporary resident or, except under the provisions of section 245(i) of the Act, to that of a lawful permanent resident;

(ii) Change of nonimmigrant status; or

(iii) Extension of stay.

(5) A transportation line bringing any alien to Guam pursuant to this section shall:

(i) Enter into a contract on Form I-760, made by the Commissioner of the Immigration and Naturalization Service in behalf of the government;

(ii) Transport only an alien who is a citizen and in possession of a valid passport of a country enumerated in paragraph (e)(3) of this section;

(iii) Transport only an alien in possession of a round-trip, nontransferable transportation ticket:

(A) Bearing a confirmed departure date not exceeding fifteen days from the date of admission to Guam,

(B) Valid for a period of not less than one year,

(C) Nonrefundable except in the country in which issued or in the country of the alien's nationality or residence,

(D) Issued by a carrier which has entered into an agreement described in part (5)(i) of this section, and

(E) Which the carrier will unconditionally honor when presented for return passage; and

(iv) Transport only an alien in possession of a completed and signed Visa Waiver Information Form I-736.

(f) *Direct transits.*