

TRAVEL WARNING – SECURITY CHECKS

Visa Stamp Appointments

Nonimmigrants traveling internationally require a valid visa stamp to return to the United States (unless they are visa-exempt Canadian citizens). Department of State (DOS) regulations require in-person interviews for most visa applicants at a U.S. embassy or consulate. In addition, consular officers must collect biometrics (digital fingerprints and photo) and run security checks on applicants prior to visa issuance.

As nonimmigrants are interviewed and security checks must be completed prior to visa issuance, visa application processing times is variable. Refer to the DOS visa wait times <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/wait-times.html> for information on the typical wait time to make an appointment, and the typical wait time after having been interviewed. Wait times vary depending on the season and are updated regularly. In any visa application, processing times can be longer than the regular processing times posted on the DOS website due to security checks, and additional "administrative processing" can extend to weeks or months. This could happen, for example, if there is an initial match to data in security databases on an applicant's name or date of birth, or if a U.S. Consul determines that an applicant's area of work may be subject to export control or other competitive technological concern. Therefore, visa appointments should always be scheduled early in a trip abroad and all applicants should anticipate delays.

Interview waivers are possible under limited circumstances. The Visa Interview Waiver Pilot Program (IWP) allows for waiver if the applicant has been issued a prior U.S. visa in the same classification and has no prior visa refusals. All applicants should verify eligibility under the IWP with the particular U.S. consular office requirements at the time of scheduling a visa appointment as IWP availability can vary. In general, interviews are waived by a consular officer for persons who the consular officer concludes presents no national security concerns, including:

1. Is a child younger than 14 years of age;
2. Is a person who is older than 79 years of age;
3. Is within a class of nonimmigrants classifiable under the visa symbols A-1, A-2, C-2, C-3, G-1, G-2, G-3, G-4, NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, or NATO-6 and who is seeking a visa in such classification;
4. Is an applicant for a diplomatic or official visa;
5. Is an applicant who within twelve months of the expiration of the previously issued visa, is seeking re-issuance of a visa in the same classification, at the consular post of his/her usual residence, and for whom the consular officer has no indication of visa ineligibility or noncompliance with U.S. immigration laws and regulations; or
6. Is a person for whom a waiver of personal appearance is warranted in the national interest or because of unusual circumstances.

The regulation also permits the DOS to require an interview notwithstanding these waiver provisions. Furthermore, personal appearance is required in all cases where an applicant meets one of the following criteria:

1. Does not reside in the consular district where s/he is making application;
2. Was previously refused a visa (unless the refusal was overcome);
3. Is the subject of a CLASS "hit," or requires a security advisory opinion or other DOS clearance (exceptions can be made for A and G visas); and
4. Is identified by the consular post as belonging to a group or sector of its visa applicants representing a high fraud risk, high refusal rate, or a security threat.

Due to unpredictability in appointment and security check processing times, applicants should expect delays in visa applications at consular posts. This is especially the case during high travel seasons, and around the new fiscal year (October 1st of each year) when individuals with approved H-1B visa petitions are applying for initial admission to the United States.

Any nonimmigrant with international travel plans that necessitate applying for a new visa at a U.S. embassy or consulate needs to be aware of the potential delays and be prepared to remain outside the U.S. for an unpredictable period of time, which could potentially extend to months.

Security Checks Involved in Applying for a Visa Stamp

All visa applicants are subject to CLASS (Consular Lookout and Support System), Integrated Automated Fingerprint Identification System (IAFIS), and IBIS (Interagency Border Inspection System) security checks. These security checks can result in significant visa processing delays. Any visa applicant may be subject to additional security checks, although nationals of certain countries (for example China, India,

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Russia, and Iran) are more likely to be subject to security checks than others. Applying at consulates outside the foreign national's home country neither increase nor decrease the risk of such security checks, and such consulates may decline to review a "third country national" visa application at their discretion.

Any visa applicant whose application is delayed under a section of the immigration laws called 221(g) and/or receives a notice that "administrative processing" is required at the interview can expect a lengthier processing that may result in delays of weeks or months. Being subject to 221(g) or "administrative processing" is considered a **visa refusal**, even if ultimately overcome, and must be noted as a previous denial on the electronic Form DS-160 by the applicant on all future visa applications.

Unofficial List of 26 Countries: Foreign nationals born in, citizens of, or even residents of certain countries are subject to lengthier security checks which may take weeks to months to complete. DOS has indicated that this is an unofficial list and may change at any time. The list has included the following countries:

Afghanistan, Algeria, Bahrain, Bangladesh, Djibouti, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Malaysia, Morocco, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen.

Technology Alert List (TAL): Foreign nationals who are working in an area considered to be included in a "critical fields list" raising technology transfer concerns, including those subject to export controls, may be subject to additional visa application delays or denials at U.S. embassies or consulates. If a consular officer believes that a visa applicant is working in a critical TAL field, the officer must request an advisory opinion from the DOS Visa Office, a process which may take several weeks or months to complete. Refer to the following website for the TAL fields as of 2003: <http://www.jackson-hertogs.com/misc/TALMantis.pdf>. More recent lists have become "classified" and can no longer be found on the public internet.

The type of information that is frequently requested for a TAL advisory opinion includes:

- **Work Experience:** a detailed resume/CV with description of applicant's current and past work, research and/or study program interests.
- **Educational Background:** name of the institution with dates of attendance, field(s) of study, degree(s) obtained and research topic(s) as applicable.
- **Specialized Skills:** languages, computer training, military service, work in defense industry, or any other specialized training.
- **Letters of Invitation:** stating the purpose of the visit and the address, website and contact information of the company, conference and/or institution that the applicant intends to visit/attend while in the United States. NOTE: typically this information is addressed in the letter of support submitted for a nonimmigrant visa petition. If you are traveling as a visitor, this information needs to be provided.
- **Publication List:** including the title, topic, date of publication and a brief abstract or summary of the publication/article/project.
- **Travel:** list of countries and dates visited in the last 10 years as well as planned itinerary for the current trip.

For some additional information on the type of information that may be requested, please see the following:

- The U.S. Embassy in Tel Aviv, Israel has available a video that explains in additional detail the information required from visa applicants in Scientific or Technical fields: <http://www.youtube.com/watch?v=megTaZoCtlo>

Applying for a Visa Stamp in Canada or Mexico for Third Country Nationals (TCNs)

General Rule: TCNs can travel to Canada or Mexico to apply for a visa stamp after following the required consular appointment procedures outlined on our "Travel issues" web page and after securing the proper visa to enter Canada or Mexico, if required. Note however that U.S. consulates take TCN applications at their discretion.

Exceptions: Nationals or citizens of countries designated as "state sponsors of terrorism", as well as other countries, may be refused an appointment and may be restricted to applying for a visa at their home country consulate. Individuals who have been out of status in the U.S. because they violated the terms of their visa or overstayed the validity indicated on their I-94 must apply at their home country consulate. U.S. embassies and consulates routinely do not accept applications for "E" visas from third country national applicants who are not resident in their consular districts. Applicants who entered the U.S. with one visa category and are seeking to return to the U.S. with a different visa category cannot apply for a visa at a Consular Section in Mexico.

Note: TCNs may be refused a visa on a case-by-case basis or encounter significant delays, in which case they must either wait for completion of processing or apply for a visa at their home country U.S. embassy/consulate. It is not possible to return to the U.S. until issuance of the visa.

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Traveling to Canada or Mexico without a Visa for Third Country Nationals

General Rule: Foreign nationals who are not citizens of Canada or Mexico can travel to these countries and reenter the U.S. within 30 days or less with a valid I-94 and visa stamp (even if it is expired or has a different classification than what is listed on the Form I-94). This rule extends to “contiguous territories” for certain foreign nationals (e.g., in F-1 or J-1 status). This is called “automatic revalidation.”

Note: This regulatory exception to the general visa requirement is discretionary. Please review the FAQ, <http://www.jackson-hertogs.com/?p=5663>, on our website regarding Automatic Revalidation. Please check with the Mexican/Canadian authorities to ascertain visa requirements to enter these countries.

Exception: Foreign nationals **cannot** use this rule if they have applied for a U.S. visa at a U.S. embassy or consulate in Canada or Mexico, and must either await completion of visa processing in Canada or Mexico, or withdraw their application and reapply at their home country consulate.

“State Sponsors of Terrorism” Exception: Nationals or citizens of countries designated as “state sponsors of terrorism”, cannot travel to Canada or Mexico and reenter without a valid visa, even if they reenter within 30 days and even if they do not apply for a visa. Currently, this list includes Cuba, Iran, Sudan and Syria. In all cases, nationals of these countries must apply for the appropriate visa before reentering the U.S.

US-VISIT

US-VISIT (U.S. Visitor and Immigrant Status Indicator Technology) is a security measure that collects biometrics (digital fingerprints and a photograph) at U.S. visa issuing posts and ports of entry. US-VISIT applies to all visitors to the U.S. between the ages of 14 and 79 (with limited exemptions) to protect against identity theft and fraud, and is being extended to lawful permanent residents as well. When applying for a visa at a U.S. embassy or consulate, the applicant’s 10 digital fingerprints and a digital photo will be collected. When arriving to the U.S. by air or sea, a CBP officer will scan the visitor’s fingerprints and take a photograph with a digital camera. At a land entry, US-VISIT biometric procedures will be completed at the port’s secondary inspection area. When departing the U.S., visitors must return Form I-94 or Form I-94W to an airline or ship representative. By returning the Form I-94, the U.S. exit process is completed.

Note that travelers entering the United States through certain air or seaports may not be issued a paper Form I-94 Arrival/Departure Record. The Form I-94 serves as evidence that a nonimmigrant has been lawfully admitted to the United States. Nonimmigrants who do not receive a paper Form I-94 card at the port of entry are advised to print a copy of their Form I-94 record from the US Customs and Border Protection (CBP) website, <https://i94.cbp.dhs.gov/i94>. If you were not issued a paper Form I-94, please provide a copy of your I-94 record to the airline or ship representative.

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