

PUBLICATION

Machine Readable Passports Required for Visa Waiver Entrants

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Starting October 1, 2003, all persons seeking entry under the Visa Waiver Program must have a machine readable passport. Applications for new passports should be made now.

The U.S. has been setting a schedule to require the security and efficiency afforded by "machine readable passports" to be presented by persons seeking to come into the U.S. The U.S. has been issuing them for many years to its own citizens. The State Department has been encouraging all countries to issue such passports, and most countries have started doing so in the last several years. It is diplomatically difficult to bar absolutely all visitors from any country lacking such passports, so Congress decided to focus first on countries whose citizens receive the special benefit of entering the U.S. as visitors without a visa (the Visa Waiver Program.)

As amended by Section 417 of the USA Patriot Act of 2001, Section 217 of the INA Section 217 of the INA requires that, as of October 1, 2003, all Visa Waiver Program ("VWP") travelers present a valid machine readable passport (MRP) for visa-free entry into the U.S. Each traveler must have his or her own passport, which prevents use of parents' passports that contain biodata for children. The Act authorizes the State Department to exempt from the requirement some countries that are making progress toward issuing such passports, but the State Department has stated it does not intend to exercise that authority.

We have already experienced such a deadline with Belgium, since a U.S. regulation re-authorizing Belgium's participation in the VWP included a deadline of May 1, 2003 for MRPs. Citizens of Belgium had to scurry to make new passport applications to their government, and backlogs in processing those passports developed. People had the alternative of applying for U.S. visitors visas without an MRP, but the surge of visa applications generated backlogs at the U.S. consulate in Belgium. Belgians who didn't hear about the new requirement appeared at airports to board planes to the U.S., only to be told by the airline that they could not board the plane without a MRP or U.S. visa, causing them to scurry for one of those and to wait for travel in the meantime. Similar conditions can be expected for nationals of some VWP countries.

The State Department notes that "Most VWP countries began issuing MRPs in the early or mid-1990s, so most VWP travelers will have no trouble complying with this requirement. Some countries, notably Switzerland (which only began MRP production this year), Italy, and Spain, may find that significant portions of their traveling public will need either a replacement passport or an NIV."

In addition, expatriates of VWP countries living elsewhere may not be able to obtain MRPs in time, and diplomatic and official passports in some countries are not machine readable.

How We Can Help

We assist clients in evaluating and comparing the seemingly innumerable visa classifications for which they might be qualified, whether a visa will be required (and if not required whether it should be obtained anyway), where and how to apply, and how best to accomplish entry. We advise clients about inadmissibility grounds that may apply and assist in waiver applications and appeals from denials of them. We assist clients in seeking review of visa denials. We represent clients in removal proceedings, where available if they are found

inadmissible. We help clients seek remedies even when they have been removed at the border without a hearing. We help clients maintain their status and extend and change it to meet new goals. We also plan and take appropriate steps toward permanent residence, coordinating such plans and steps with the temporary status.