

PUBLICATION

Beware of Visits and Visas in Canada/Mexico

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In the past, two special opportunities worked together for aliens from any country going to Canada or Mexico from the U.S. First, people from any country could apply for a new visa in Canada or Mexico without having to go to their home country to do it, as long as they had not entered the U.S. most recently as a visitor and had not overstayed a visa in the past. Second, as long as they had an I-94 card that was still valid, they could use that card along with an old visa (even a visa in a classification from which they had changed) to return to the U.S. from a visit only to Canada or Mexico (or "adjacent islands other than Cuba) for 30 days or less.

In response to terrorism and other concerns, the State Department has changed both rules for many people. First, people who are not from the country of the consulate's location (Canada or Mexico) must make an appointment for the visa at least two weeks ahead. If the applicant is from one of about 26 countries subject to additional security clearances, the consulate will notify the applicant that the appointment has been cancelled (so that the visa can only be acquired through the home country, after security checks that take 20 to 30 days). The 26 countries are not published but appear to be Afghanistan, Algeria, Bahrain, Djibouti, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Malaysia, Morocco, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, the United Arab Emirates and Yemen.

Second, the rule on returning on an I-94 card from Canada and Mexico has been changed in several ways. People from countries designated by the U.S. as state sponsors of terrorism (Iraq, Iran, Syria, Libya, Sudan, North Korea and Cuba) may not use this procedure at all and must obtain a new visa from their home country. People from other countries can no longer use the I-94 to return if they have applied for a visa while abroad. This has the effect of eliminating one of the great incentives for people in the U.S. in lawful status to apply for a new visa in Canada or Mexico rather than elsewhere, because the I-94 no longer serves as a sure way to re-enter if the visa application in Canada or Mexico is denied.

This change comes after the imposition of the additional Form DS-157 for all male visa applicants between ages 16 and 45 (and for a wider range of applicants under some circumstances).

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.