

# THE ALIEN FILE

## Wanting To Visit The US? Changes For The Visa Waiver Program

by Susanna Bogue

**Q** NOW THAT THE ECONOMY is not doing so well in Ireland, many of my friends are considering coming to California. Some of them were here before for many years before giving up hope and leaving last year. What are the chances of them getting back in? Should they get a new passport? Others are just coming to check things out and will stay if they can find work. Will they have problems getting in?

**A:** I RECENTLY VISITED the San Francisco International Airport on a tour arranged by the American Immigration Lawyers Association and CBP, the US Customs and Border Protection agency. During the tour they mentioned that 90 percent of travelers are fine, they have no issues and are admitted as visitors. One to three percent are referred to "Secondary" for further questioning to determine whether they are admissible or not. Only one percent face

and can just enter using their US passport. The countries enrolled in the Visa Waiver program are Andorra, Australia,

receive notice that travel to the US is not authorized so they will never even get to board the plane. Certain biographic infor-



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Questions of general interest will be answered in this column which is co-written by Susanna Bogue and Chris Kerosky. Send your questions to Susanna by e-mail to [sib@justimmigration.com](mailto:sib@justimmigration.com) or write Susanna Bogue, PO Box 22261, San Francisco, CA 94122-0261. The advice in this article is general in nature, so consult an immigration attorney for specific problems.

Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom. Earlier this

mation (name, phone number, e-mail, passport information, address where you will stay in the US, and questions similar to those on the back of the current green I-94W visa waiver form) will be required for registration and to determine whether the person is eligible for travel under the Visa Waiver

adverse action (not admitted, returned to home country). So at the minute, the odds are fairly good that all of your friends will get in without any problem. However, just because they get in does not mean that they should have gotten in and most likely the ones who stayed here for years are not admissible as they should face a ten year bar for overstaying their 90 day Visa Waiver by over one year and then by departing the US (note it is the departure which triggers the ten year bar, not the overstay). Getting a new passport should not change anything as the computer records trips based on your name, date of birth, and country of birth. The friends who have not been here before will probably get in as there will be nothing negative in the computer on them, however, if it is revealed that their true purpose is to find work, they too should not be admitted as the Visa Waiver program is only for visitors who plan to stay less than 90 days. San Francisco is a tourist destination and with the dollar so low against the Euro, we can expect increased travel from Europe and in this regard we have a top-notch airport designed to quickly process visitors from both Europe and Asia and other parts of the world.

The Visa Waiver program allows citizens and eligible nationals from mostly European countries to travel to the US for tourism or business for stays of 90 days or less without obtaining a visa. This is somewhat reciprocal as US citizens visiting those countries generally do not need a visa

year it was announced that Visa Waiver agreements were entered into with Slovakia, Hungary, Lithuania, Estonia, Latvia, and Korea. It is a national disgrace that despite the historic ties between the US and Poland that Poland has not yet been added to the Visa Waiver program.

Beginning shortly (it is already being tested at the moment in some airports), in addition to having their biographical information swiped from their passport and being photographed, all Visa Waiver entrants will be ten-printed instead of just the two index fingers. If there is a mismatch with the fingerprints, the person will be sent to Secondary. In April the Department of Homeland Security proposed a rule to have the airlines collect the biometrics (fingerprints and photographs) from foreign nationals upon their exit. At the moment all passenger information is checked through the AFIS system which looks for past overstays, among other information, while the airplane is in flight.

This will also be changing as the Visa Waiver program begins this month using the new Electronic System for Travel Authorization (ESTA). ESTA will be available in English only initially but other languages will follow. All Visa Waiver travelers will be required to obtain an electronic travel authorization prior to boarding as of January 12, 2009. The idea is that people wanting to use the Visa Waiver program will have to register ahead of time and then those who are not eligible will

program and whether they pose a law enforcement or security risk.

Travelers are encouraged to apply early but no less than 72 hours prior to travel. The registration response will be received within seconds and either travel will be authorized or not. Some people will get an authorization pending and will need to check the ESTA website for updates within 72 hours to receive a final response. If authorization is denied, the person will need to go to the US Embassy to apply for a visa. The authorization, unless revoked, will be valid for up to two years or until the passport expires, whichever comes first, and will be valid for multiple trips into the US. However, even if a person receives authorization they will still be screened throughout pre-departure, in flight, and upon arriving in the US and they can still be refused entry at the US airport. After January 12, 2009, Visa Waiver travelers who do not receive authorization may be denied boarding, experience delayed processing, or be denied admission according to CBP's on line flyer. Without either a visa or ESTA authorization travel to the US will not be possible. European officials have told the State Department that they will be considering reciprocal action (i.e. their own electronic travel authorization system) for US travelers who plan to visit Europe.

*Farewells: Best wishes to Émer Deane, Consul General of Ireland, and Úna Fannon, Vice-Consul of Ireland, as they depart the Consul to pursue their next adventures!*