



8 CFR Part 217

Brunei Electronic System for Travel Authorization Validity Period

AGENCY: Office of Strategy, Policy, and Plan; DHS.

ACTION: Announcement of ESTA validity period.

SUMMARY: This notice announces that the U.S. Department of Homeland Security (DHS) is reducing Brunei Darussalam's Electronic System for Travel Authorization (ESTA) travel authorization validity period for travel by citizens or nationals of Brunei under the Visa Waiver Program (VWP) to the United States from two years from the date of issuance to one year for ESTA applications received after the date of publication of this notice. DHS is making this change based on the Government of Brunei's inability to satisfy multiple VWP requirements.

DATES: This announcement is effective on July 6, 2023.

FOR FURTHER INFORMATION CONTACT: Anjum Agarwala, Visa Waiver Program Office, Office of Strategy, Policy, and Plans, Department of Homeland Security, 2707 Martin Luther King Jr Ave SE, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

A. *The Visa Waiver Program*

Pursuant to section 217 of the Immigration and Nationality Act (INA), 8 U.S.C. 1187, the Secretary of Homeland Security (the Secretary),¹ in consultation with the Secretary of State, may designate certain countries for participation in the Visa Waiver Program (VWP) if certain requirements are met. Those requirements include, among others:

- (1) A rate of nonimmigrant visitor visa refusals for citizens or nationals of the

¹ The Secretary of Homeland Security has delegated this authority to the Under Secretary for Strategy, Policy, and Plans pursuant to DHS Delegation 23000, Delegation to the Under Secretary for Strategy, Policy, and Plans, Sec. II.L.4.

- country below the statutorily established threshold;
- (2) certification by the government seeking designation for VWP participation that it issues machine-readable passports that comply with internationally accepted standards;
 - (3) a determination by the Secretary, in consultation with the Secretary of State, that the country's designation would not negatively affect U.S. law enforcement and security interests;
 - (4) an agreement to report, or make available through INTERPOL or other designated means authorized by the Secretary, information about the theft or loss of passports to the U.S. government within the designated timeframe;
 - (5) the country's government's acceptance for repatriation of any citizen, former citizen, or national not later than three weeks after the issuance of a final order of removal; and
 - (6) an agreement with the United States to share information regarding whether citizens and nationals of the country traveling to the United States represent a threat to the security or welfare of the United States or its citizens.

See INA section 217(c)(2)(A)-(F), 8 U.S.C. 1187(c)(2)(A)-(F).

The INA also sets forth requirements for countries' continued VWP eligibility and, where appropriate, probation, suspension, or termination of program countries. *See* INA section 217(c)-(f), 8 U.S.C. 1187(c)-(f).

Citizens and eligible nationals of VWP countries may apply for admission to the United States at U.S. ports of entry as nonimmigrant visitors for business or pleasure for a period of ninety days or less without first obtaining a nonimmigrant visa, provided they are otherwise eligible for admission under applicable statutory and regulatory requirements. To travel to the United States under the VWP, a noncitizen must, without limitation:

- (1) be seeking entry as a visitor for business or pleasure for ninety days or less;

- (2) be a citizen or national of a VWP country;
- (3) present a valid unexpired electronic and machine-readable passport that meets program requirements and is issued by a designated VWP participant country to the air or vessel carrier before departure;
- (4) execute the required immigration forms;
- (5) if arriving at a port of entry into the U.S. by air or sea, arrive on an authorized carrier;
- (6) not represent a threat to the welfare, health, safety or security of the United States;
- (7) not have failed to comply with the conditions of any previous admission as a nonimmigrant visitor;
- (8) possess a round-trip transportation ticket;
- (9) obtain an approved travel authorization via Electronic System for Travel Authorization (ESTA);
- (10) waive the right to review or appeal a decision regarding admissibility at the port of entry or to contest, other than on the basis of an application for asylum, any action for removal; and
- (11) meet other program requirements.

See INA section 217(a)–(b); 8 U.S.C. 1187(a)–(b). *See also* 8 CFR part 217.

Brunei was designated for participation in the VWP on July 29, 1993. *See* 58 FR 40581.

B. ESTA Validity Period

Typically, under DHS regulations, a travel authorization issued under ESTA is valid for a period of two years from the date of issuance. *See* 8 CFR 217.5(d)(1). However, the Secretary, in consultation with the Secretary of State, may decrease ESTA travel

authorization validity period for a designated VWP country. *See* 8 CFR 217.5(d)(3).² DHS publishes notice of any changes to ESTA travel authorization validity periods in the **Federal Register**. 8 CFR 217.5(d)(3).

II. Reduction of Brunei's ESTA Validity Period

DHS conducts the statutorily required review of each participating VWP country at least once every two years to evaluate the effects that continuing the country's designation in the program will have on U.S. national security, law enforcement, and immigration enforcement interests. *See* INA section 217(c)(5)(A), 8 U.S.C. 1187(c)(5)(A).

In May 2018, DHS conducted an in-country statutorily required periodic review of Brunei's continued designation as a participating country in the VWP. The comprehensive review assessed Brunei's counterterrorism, law enforcement, immigration, border control, and document security capabilities and practices. DHS identified a number of areas of non-compliance with VWP requirements. DHS formally communicated its concerns to senior Government of Brunei officials and provided a list of action items with associated timelines for completion which, if timely completed, would address DHS's concerns, and maintain Brunei's standing as a participating country in the VWP.

DHS and the U.S. Department of State engaged regularly with Bruneian officials at both the technical and political levels over the following years to provide technical assistance and encourage progress. However, Brunei failed to meet the deadlines outlined in its VWP workplan. A July 2022 DHS in-country periodic review showed that Brunei still had made insufficient progress on the workplan. This non-compliance compromises the integrity of the VWP as a security partnership.

DHS is publishing this notice announcing that effective July 6, 2023, DHS is decreasing Brunei's ESTA validity period for travel to the United States from two years to one year for applications received after the effective date of this notice. Should Brunei's non-

² As noted above, this authority is delegated to the Under Secretary for Strategy, Policy, and Plans.

compliance with VWP requirements continue, DHS, in consultation with State, may make further adjustments to Brunei's VWP designation at any time, including suspension or termination from the program.

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