



Blaneys on Immigration

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This newsletter is designed to highlight new issues of importance in immigration related law. We hope you will find it interesting, and welcome your comments.

Feel free to contact any of the lawyers who wrote or are quoted in these articles for more information, or call the head of our Immigration Law Group, Ian Epstein at 416.593.3915 or iepstein@blaney.com.

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CANADA TO IMPLEMENT ELECTRONIC TRAVEL AUTHORIZATION PROGRAM

Henry J. Chang

Introduction

As part of the *Canada-United States Perimeter Security and Economic Competitiveness Action Plan* (the “Action Plan”), Canada and the United States agreed to establish a common approach to screening visa-exempt foreign nationals in order to identify threats before they arrive in the North American perimeter. On December 7, 2013, Citizenship and Immigration Canada (“CIC”) published a Notice of Intent in the *Canada Gazette*, indicating its intention to introduce an Electronic Travel Authorization (“eTA”) Program in Canada. The eTA program will be similar to the Electronic System for Travel Authorization (“ESTA”) Program, which currently applies to foreign nationals who enter the United States under the Visa Waiver Program.

Overview of the eTA Program

Once implemented, the proposed amendments to the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the “Regulations”) would require most visa-exempt foreign nationals to apply for and obtain an eTA registration before entering Canada by air (but not by land). By screening

visa-exempt foreign nationals before they arrive in Canada (by air), the Government of Canada hopes to prevent foreign nationals who are inadmissible or who do not meet the requirements of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”) from travelling to Canada.

The Notice of Intent states that, because Canadian citizens are currently exempt from the ESTA requirement in the United States, United States citizens travelling to Canada will be exempt from the eTA requirement. However, the following travellers could be subject to the eTA requirement:

- Citizens of current visa-exempt countries listed in Subsection 190(1) of the Regulations, other than citizens of the United States;
- Foreign nationals travelling with passports listed under Subsections 190(2) and (2.1), which include:
 - o Holders of passports that contain a diplomatic acceptance, a consular acceptance or an official acceptance issued by the Chief of Protocol for the Department of Foreign Affairs and International Trade on behalf of the Government of Canada and who are a properly accredited diplomat, consular officer, representative or official of a country other than Canada,

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- o of the United Nations or any of its agencies, or of any international organization of which Canada is a member;
- o Holders of passports or travel documents issued by the Holy See;
- o Holders of national Israeli passports;
- o Holders of passports issued by the Hong Kong Special Administrative Region of the People's Republic of China;
- o Holders of passports issued by the United Kingdom to a British National (Overseas), as a person born, naturalized or registered in Hong Kong;
- o Holders of passports issued by the United Kingdom to a British Subject which contains the observation that the holder has the right of abode in the United Kingdom;
- o Holders of ordinary passports issued by the Ministry of Foreign Affairs in Taiwan that includes the personal identification number of the individual;
- o Citizens of Lithuania or Poland if they hold machine readable passports that contain a contactless integrated circuit chip and that is issued by Lithuania or Poland; and
- Foreign nationals currently listed in Subsection 190(3) of the Regulations, which include (among others):
 - o Air crew members;
 - o Foreign nationals transiting through Canada under the Transit Without Visa Program or China Transit Program; and
 - o Foreign nationals re-entering Canada after a visit solely to the United States or Saint-Pierre and Miquelon, provided that the requirements of Paragraph 190(3)(f) are met.

The proposed regulatory amendments would specify that foreign nationals who require an eTA must apply online through the CIC Web site by entering mandatory biographic, passport and background information similar to the information that is currently requested by immigration officers at ports of entry or in applications for a temporary resident visa. These background questions are designed to disclose potential grounds of inadmissibility under the Act.

In order to determine that the eTA applicant is not inadmissible and meets the requirements of the Act, an electronic system would perform an examination that includes a risk assessment and a verification of the information provided in the application against immigration and enforcement databases. CIC expects that the majority of applications will be approved by the electronic system within minutes of applying.

Any application that is not automatically approved by the electronic system will be referred to an immigration officer for further examination. If an examination by an immigration officer is required, they would have the ability to either approve or deny an eTA application after making a determination regarding the foreign national's admissibility or compliance with the Act.

Once approved, an eTA would be valid for a period of up to five years. However, officers would have the ability to suspend or cancel the eTA, if

the foreign national becomes inadmissible to Canada at a later time.

The proposed regulatory amendments would also impose a small cost recovery fee for eTA applications.

Unanswered Questions

The Notice of Intent did not provide a detailed explanation of how CIC would actually implement the eTA program. As a result, several questions remain unanswered, including the following:

- It is unclear whether eTA applicants would be given an opportunity to explain their situation if the electronic system cannot automatically approve their request and it is referred to an immigration officer. Would the immigration officer contact the applicant and offer him or her an opportunity to establish admissibility before rendering a final decision?
- If an eTA application is denied, would it constitute a refusal of admission or a refusal of a visa? If so, would an applicant be required to disclose this denial during a subsequent application or inspection? Would the applicant be able to reapply for an eTA at a later date?
- What rights of appeal would be available to an applicant who has been denied an eTA?

- If a visa-exempt foreign national is denied an eTA but is still potentially eligible to enter Canada, perhaps with a temporary resident permit (“TRP”), would he or she be permitted or required to apply at a Canadian embassy or consulate? If so, would this not result in significantly higher backlogs at consular posts?
- Would information collected in connection with the eTA application be shared with the United States? If so, what types of information would be shared?

Hopefully, these outstanding questions will be answered once the proposed regulatory amendments are published. ■

EXPECT THE BEST

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