

Immigration Alert

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US Department of State Changes Visa Issuance Policies

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Key Points:

- U.S. embassies and consulates abroad may now waive many in-person appointments for U.S. visas.
- Visa applicants for in-person appointment waiver must have a previously issued visa or previous travel to the United States on ESTA.
- Visa applicants must still be physically present in consulate's jurisdiction.
- Consulates are not required to waive in-person visa appointments and variations in implementation should be expected.

The U.S. Department of State has made several changes aimed at processing a greater volume of visa applications and alleviating the visa backlog created as the result of executive orders of the previous administration and the COVID-19 pandemic. The changes include expanded exceptions to in-person visa interview requirements for certain temporary visa applicants, namely:

- Persons in Specialty Occupations (H-1B visas)
- Trainees or Special Education Visitors (H-3 visas)
- Intracompany Transferees (L visas, but not Blanket L visas)
- Individuals with Extraordinary Ability or Achievement (O visas)
- Athletes, Artists and Entertainers (P visas)
- Participants in International Cultural Exchange Programs (Q visas)
- Students (F and M visas) and Individuals in Various Academic Occupations (Students, Professors, Research Scholars, Short-term Scholars and Specialists) (J visas).

What are the Specific Changes?

As of December 23, 2021, pursuant to a [Department of State announcement](#), consular officers at U.S. Embassies and Consulates have discretion to waive in-person

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interview requirements for applicants in the above-listed categories if those applicants meet certain criteria:

- They were previously issued visas in any category or traveled under the Visa Waiver Program's (VWP) Electronic System for Travel Authorization (ESTA) approval.
- They are applying for the visa in their country of nationality or residence.
- They have not been previously refused a visa, unless the refusal was overcome or waived.
- They have no apparent ineligibility for the requested visa.

Importantly, the Department of State's Foreign Affairs Manual (FAM)—official guidance that the Department issues to its consular officers—continues to require that the visa applicant be physically present in the consulate's jurisdiction, so it is not possible to mail the applicant's passport to the consulate from the United States.

The new visa policies are valid until the end of 2022 but can be extended by the Department of State.

What Was the Visa Policy Before This Change?

Under the previous Department of State policy, consular officers could waive in-person visa appointments only for applicants requesting renewals of their visas in the same visa category within four years of the visa's expiration. This policy (which includes B-1/B-2 visitor visa renewals) has now been **extended indefinitely**.

In addition, the expansion of the in-person visa appointment waiver means that, as long as the applicant held any U.S. visa previously, their in-person appointment can be waived, as long as they meet all the listed criteria. This means, for example, that an individual applying for their first H-1B or L-1 visa may not need to appear for an in-person interview if they previously held an F-1 (student) or a B-1/B-2 (visitor) visa, or if they traveled to the United States on ESTA under the **VWP**, which exempts citizens of 40 designated countries from having to obtain visitor visas. For citizens of VWP countries, this could be their very first visa appointment at a U.S. consulate since ESTA travel does not require the issuance of a visa by the consulate and is instead an entirely electronic process.

How Will the New Visa Policy Affect Visa Applicants Going Forward?

In-person visa appointments have been either unavailable or only available on an emergency basis in many countries for the past two years since the COVID-19 pandemic shuttered U.S. Embassies and Consulates in March 2020. Visa applicants have had to wait many months for an in-person appointment to open up, and appointments were often cancelled at the last minute by consulates. The policy to issue visas without in-person appointments should allow consulates to process many more visa applicants than previously. The change in policy should result in a more predictable functioning of consular sections and should generally allow visa applicants to obtain their visas faster.

Visa applicants must still submit their visa application online, pay the applicable visa fees, provide supporting documents to establish eligibility and, in some cases, be fingerprinted by the consulate. For their part, consulates will need to devise

procedures for submission of the required documentation and visa processing by consular officers, but there is no question that the waiver of the in-person visa appointment—likely the most time-consuming part of the process—should expedite visa issuance. This is especially important as companies are gearing up for the H-1B lottery due to take place in March 2022. Many of the selected H-1B beneficiaries will be applying for their first H-1B visas later this year, and the ability to waive a significant number of those in-person visa appointments should allow consulates to issue their visas in time for them to arrive in the United States and begin their employment.

Does the New Policy Mean That it Will Apply to Anyone Who Meets the Listed Criteria?

No, the policy does not mean that anyone who meets the criteria in the Department of State guidance will be automatically issued a visa without an in-person visa appointment. It is important to remember that visa interview waivers are discretionary and consular officers have the discretion to require an in-person interview on a case-by-case basis. An applicant does not have a right to have the visa appointment waived; the decision to do so belongs to the consular officer and is not appealable or reviewable.

Additionally, the Department of State policy is issued as guidance to individual consulates. This means that consulates are not required to follow it and can implement it differently from each other. Therefore, we should expect location-specific practices and considerations that will affect the implementation of the visa appointment waiver policy. Even though the policy is geared toward alleviating the bottlenecks in visa issuance, staff shortages and the COVID-19 pandemic will continue to produce variations in how consulates function, including the implementation of this new policy. Each applicant should review the relevant consulate's website to determine that consulate's level of service as well as applicable visa application process under the new policy.

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