

## Traveled to Cuba After Jan. 12, 2021? CBP Updates ESTA Platform, Visa Stamp Now Required

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The U.S. and Cuba have a history of strong ties and elevated conflicts since the Spanish-American War. The latest platform update by U.S. Department of Homeland Security, Customs & Border Protection (CBP) based on a 2015 law is a continuing saga combining geopolitics, a 60-year-old ineffective embargo, natural resource interest and national security 90 miles from U.S. borders. The saga is augmented by the backdrop of human struggles for survival and freedom within the faded memory of history.\*

In a July 6, 2023, CBP and Carrier Liaison Program publication, they announced the Electronic System for Travel Authorization (ESTA) application form and mobile app was updated to incorporate legal requirements established in 2015. This change closed a loophole required by provisions of the [Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015](#) to enhance national security on travelers from 90 countries who visit the U.S. without undergoing a visa application vetting process.

Under the act, foreign nationals who traveled to Cuba after Jan. 12, 2021, cannot use the Visa Waiver Program (VWP) with an ESTA to enter the U.S. Dual nationals of VWP countries and Cuba also cannot enter the U.S. on the VWP. They must first apply for a visa stamp at a U.S. consulate abroad before travel to the U.S. Now, the ESTA system will specifically ask if they ever traveled to Cuba for any reason after Jan. 12, 2021.

The U.S. immigration system, like other countries, allows certain foreign citizens with specific passports to enter for 90 days without a visa stamp in their passports for pleasure or business purposes. These foreign nationals enter the U.S. based on their citizenship or nationality, passport type and clearance via an electronic security screening process. This [waiver program](#) includes 90 countries who have an agreement with the U.S. based on their low levels of violations or immigration to the U.S. This list is constantly changing depending upon agreements with foreign states based on their citizens' immigration patterns to the U.S.

ESTA is a web-based system operated by the CBP to perform security background checks on eligible foreign nationals. The application, requirements and an FAQ are available [on the DHS website](#).

In 2015, the act was passed related to enhance security under the VWP/ESTA programs. It

designated seven countries as State Sponsors of Terrorism (SST) – Cuba was one of them. It imposed new restrictions for reasons of national security. Any foreign national from a VWP country who traveled to these countries after the specific date was ineligible to use the VWP/ESTA clearance for U.S. entry. **They would be required to obtain a visa stamp at a U.S. consulate. These categories included the citizens or nationals of VWP countries who:**

1. Traveled to or present in Democratic People's Republic of Korea (North Korea), Iran, Iraq, Libya, Somalia, Sudan, Syria, or Yemen on or after March 1, 2011
2. Traveled to or present in Cuba on or after Jan. 12, 2021
3. Dual Nationals – Nationals of VWP countries and also nationals of Cuba, Democratic People's Republic of Korea, Iran, Iraq, Sudan, or Syria

**The limited exceptions are:**

1. Foreign nationals of VWP countries who travel for diplomatic or military purpose while in service to a VWP country
2. Note this exception does not apply to dual nationals

In the case of travel to Cuba after Jan. 12, 2021, the ESTA system had missing questions permitting VWP nationals to omit travels to Cuba. This omission is now changed on the platform. Consequently, an existing ESTA clearance will likely be revoked if it is later determined the traveler was in Cuba after Jan. 12, 2021. ESTA also will be revoked if they hold dual nationality with a VWP country (i.e., Spain) and Cuba. In either of these situations, the person will receive an ESTA notification indicating a status change.

Nevertheless, ineligibility for an ESTA clearance to enter under the VWP (without a visa) is not a bar to travel to the United States. The VWP country traveler must simply apply for a U.S. B-1/B-2 visa to travel and enter the U.S. for pleasure or business. The appointments for this category can be quite lengthy varying with operations of U.S. consular post abroad.

Sometimes individuals incorrectly think obtaining a new passport is an option to work-around these VWP/ESTA legal restrictions. The update to the ESTA system closes any doubt. No option other than full disclosure is necessary. Serious penalties, such as deportation or permanent inadmissibility to the U.S., are possible with a misrepresentation to the U.S. government on immigrant matters.

Any VWP traveler to the U.S. should consider checking their ESTA clearance before confirming travel plans. The ESTA program requires updates as a person's U.S. immigration history or documents change. Spending thousands of dollars to discover a denial at boarding or arrival into the U.S. can be avoided by checking one's clearance.

*\* The author is a Cuban-American with familial knowledge of the history.*

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