

## KOREA & THE VISA WAIVER PROGRAM



by

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Imagine you are a citizen of South Korea who would like to visit the United States for a short period of time. Not to work, not to stay, not to go to school, just to visit for a short period of time.

You hear about the process of applying for a non-immigrant visa (NIV) and you become discouraged. It is a time-consuming process, often difficult to understand and the decision on whether or not to grant you a visa to travel to the United States often times depends not so much on your application but rather the mood of a Department of State consular officer reviewing your application.

For many Korean citizens, the process of applying for a visitor's visa seems too daunting and many Koreans simply don't apply for fear of being rejected. In the summer of 2003, my wife (Attorney Kristen Aekyung Chang) and I traveled to South Korea where I taught an immigration law class at Handong International Law School. In speaking to a number of students, they mentioned to me how hard it was to get a visa. Many of them assumed they would never qualify for a visa to the United States.

Now, imagine if Korea were admitted into the U.S. Visa Waiver Program. The Visa Waiver Program was formed by the United States government in 1986 as a means to facilitate international travel to the United States from citizens of certain countries who met certain criteria. Citizens of these select countries can travel to the United States without obtaining a B-1/B-2 nonimmigrant visa and can be admitted for up to 90 days in order to visit for pleasure or for business purposes (typical B-1/B-2 purposes). Admission to the United States under the Visa Waiver Program (VWP) is very limited – it is only to visit for pleasure (vacation, visit family members, etc.) or to visit for limited business purposes. As part of the U.S. Visa Waiver Program you do not need to apply for a visa in order to visit the U.S.. You simply need to have the required passport from your country of citizenship and you need to be coming to the United States for the limited purpose of a short visit for business or pleasure purposes.

Currently, there are 27 countries which are a part of the U.S. Visa Waiver Program. These countries are: Andorra, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom. South Korea is not included in the list of Visa Waiver Program countries.

So, how can South Korea become a part of the Visa Waiver Program? Many people believe that the President or the Department of State can simply designate South Korea (or any other country) for inclusion in the Visa Waiver Program. That is not true. In order to be eligible for the Visa Waiver Program, South Korea (and all other countries) must meet the following legal requirements set forth at Section 217 of the Immigration and Nationality Act:

1. **Similar travel privileges for U.S. citizens:** The country must waive visa requirements for U.S. citizens traveling to the visa waiver program country.
2. **Machine Readable Passport:** Citizens of Visa Waiver countries traveling to the U.S. must have valid, unexpired machine-readable passport with certain biometric features.
3. **Low Nonimmigrant Visa Refusal Rate:** The average number of refusals of nonimmigrant visas to nationals of the visa waiver program country during the previous fiscal year must be less than 3 percent (3%).
4. **Law Enforcement and Security Interests:** U.S. government officials must evaluate the effect that designating the country for Visa Waiver Program status would have on U.S. law enforcement and security purposes.
5. **Reporting Lost and Stolen Passports:** The country must enter into an agreement with the United States for promptly reporting lost or stolen passports.
6. **Repatriation of Aliens:** The country must accept the return of its citizens with final orders of removal.

By far, the single, major hurdle holding up South Korea's inclusion in the Visa Waiver Program is the requirement of having a low visa refusal rate. As noted above, the visa refusal rate must be less than 3%. According to a report published by The Heritage Foundation in year 2005, the nonimmigrant visa refusal rate was approximately 4% (a whole percentage point higher than the acceptable limit). Despite the obvious incentives to have South Korea in the Visa Waiver Program (for example, increased tourism revenue for the United States, better relations between the U.S. and South Korea, etc.), South Korea must get its visa refusal rate below 3% before it can be considered.

Let's imagine for a minute that the visa refusal rate can be lowered to below 3% and that South Korea is designated for inclusion in the Visa Waiver Program. Assuming that happens, South Korean citizens who otherwise would be required to obtain a B-1/B-2 visa to visit the United States could come to the United States for up to 90 days to visit. Essentially, the Korean passport would take the place of the B-1/B-2 visa.

While it would be easier to come to the United States if South Korea were included in the Visa Waiver Program, the Visa Waiver Program places several limits on foreign national

using it to enter the United States. Generally speaking, VW entrants cannot extend their status beyond the 90 days (except in limited cases of medical emergency), cannot change their status to another nonimmigrant status while in the United States, and cannot file for a green card while in the United States (unless they are the spouse, parent or unmarried minor child under age 21 of a U.S. citizen).

Finally, the countries which are selected for the Visa Waiver Program must continue to meet certain requirements, including continuing to have low visa refusal rates. If a country has an increase in visa refusals above a certain level or citizens of the country overstay their admission period, that country can be removed from the Visa Waiver Program. Argentina found this out when it was removed from the Visa Waiver Program in 2002.

In conclusion, for several years there has been talk of South Korea joining the Visa Waiver Program. In order to be eligible, the visa refusal rate for South Koreans must fall below 3%. Nobody knows when or if that will ever happen. If it does and South Korea is invited to the Visa Waiver Program, South Korean citizens will enjoy greater travel flexibility to the United States.

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