

## **“US Immigration and Foreign Tourists Who May Not be Among the Purist” by Adam Edward Rothwell, Esq.**

With all the controversy surrounding US Immigration, tourism remains one of the most relatively common and un-controversial reason foreign citizens enter the United States. Yet, tourism generally either gets lost in or is just flat-out ignored throughout the US Immigration debate (assumedly because most Americans have no real issue with or concern over foreign tourism to the US).

Most Americans assume foreign tourists visit the US simply to spend money and leave, which makes foreign tourists entering the US a complete non-issue for debate. Within the US there is neither controversy nor concern over foreign tourism. Yet, even foreign tourism may involve controversial issues related to US Immigration. For these reasons, foreign visitors entering the US assumedly for tourism deserve closer examination.

Foreign tourism to the US from an immigration law perspective does not specifically mandate intent to go on vacation but rather just involves a matter of status. Meaning to enter the US as a tourist, a foreign citizen must either enter the US on Visitor Visa or on the ESTA Program, which allows qualified citizens of 38 countries to enter the US without receiving a visa from a US Consulate. For purposes of this article, I am only going to focus on Visitor Visas and related status. The ESTA Program has its own issues.

Since being a visitor under US Immigration Law is more closely related to simply the legal entry status of a foreign citizen than his/her actual intent to visit a destination like Disney World, immigration issues related to foreign tourists in the US do regularly occur. For example, by entering the US on a visitor visa, under the law a foreign tourist to the US may not have any intent to remain past the expiration of the visitor visa. However, every year many thousands of foreign citizens who enter the US on visitor visas have full, unlawful intent to stay past expiration of their visitors visas. Once again this is unlawful and a clear violation of US Immigration Law.

Even if a foreign citizen enters the US on a B-2 Visa as a tourist, it still may be possible for the foreign citizen to change to another status within the US, if the new status requirements may be met. For example a foreign citizen with extraordinary ability in an area who enters the US for up to six months on a B-2 Visa as a tourist may still be able to apply for and receive a green card through his/her extraordinary ability without ever leaving the US. This is admittedly confusing, but one reason for the confusion is it probably does not make much sense. As another example, every year tens of thousands of tourists to the US just do not leave and overstay, occasionally for very long periods of time. In fact I once received a green card for a foreign citizen through a legitimate marriage to a US Citizen where the foreign citizen client had overstayed his tourist visa for over 24 years before we submitted the paperwork.

What the above means is, not every tourist to the US really has pure intentions related to US Immigration Law. Still, with all current issues related to US Immigration, concern over foreign tourists who enter the US on visitor visas is far from the radar of average Americans. For what it is worth, this is one reason why US Consular Officers play such an important role. US Consular Officers have what often amounts from a practical standpoint to total responsibility for ensuring oversight in the Visitor Visa application process. If a US Consular Officers approves the Visitor Visitor Application, the foreign citizen may then start packing to be a tourist.

N.B. The title of this article includes a limited, parody allusion to a line of lyrics from the great “One Night in Bangkok” by Murray Head, which was legitimately one of the first rap songs to reach high on US national charts.

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