

Visas and free movement: are they compatible?

In order to answer that question, it is important, first of all, to break down what is understood by the terms “visas” and “free movement”.

What is a visa?

Whilst visa systems around the world share many similarities, there are also significant operational variations. The IOM Glossary defines a visa as, *“an endorsement by the competent authorities of a State in a passport or a certificate of identity of a non-national who wishes to enter, leave, or transit the territory of the State that indicates that the authority, at the time of issuance, believes the holder to fall within a category of non-nationals who can enter, leave or transit the State under the State’s laws”*. Wikipedia goes on to say, *“the possession of a visa is not in itself a guarantee of entry into the country that issued it, and a visa can be revoked at any time.”*

For many countries, a visa is issued, and only issued, before travel, sometimes also known as a pre-travel clearance. Applications for pre-travel visas are generally made via overseas diplomatic missions although, over recent years there has been a significant increase in on-line visa application systems. Persons who require a pre-travel visa, and who travel (or attempt to travel) without one can expect to be denied boarding at check-in or refused entry on arrival.

Persons benefitting from a visa waiver (or exemption), may travel and arrive without a visa but can, nonetheless, usually expect to be examined (as to purpose, duration, funds, ticketing etc) upon arrival to assess their eligibility for entry within the prevailing immigration legislation.

In most countries, whether a person is a visa holder or benefitting from a visa waiver, the final decision to grant entry generally rests with the border control or immigration officer.

The issuance of visas prior to travel offers the following benefits:

- It provides advance passenger information (who is arriving and when);
- It enables security screening before travel;
- It enables an admissibility assessment before arrival;
- It eliminates the need for potential removal and detention costs for those who do not meet the visa conditions;
- It assists carriers in determining, at check-in, whether a traveler should or should not be allowed to board a plane, ship, train etc to any particular destination, effectively operating as the first line of border control.

However, as a result of limited international diplomatic representation, some, particularly smaller countries, have difficulty in providing a widely accessible, pre-travel visa issuance service which meets the needs of prospective overseas visitors. This leaves those countries with, probably, 5 options:

- Do nothing
- Increase the number of overseas diplomatic missions;
- Grant visa waivers to non-citizens;
- Introduce visas on arrival;
- Introduce an on-line visa application system.

Doing nothing is unlikely to be a viable option since this is a barrier to trade, commerce and tourism, and increasing the number of overseas missions is prohibitively expensive, that leaves 3 remaining options.

The next two options:

- The grant of visa waivers to non-citizens;
- The introduction of visas on arrival; are, arguably, the same thing.

If, as is the case in many countries, the final decision to grant entry rests with the border control or immigration officer and if, again as is common practice, the border officer stamps the passport with an “entry permit” or similarly named endorsement which defines the duration of the stay and any restrictions (e.g. no entitlement to work), it brings into question the validity of a visa on arrival.

There are numerous examples of individual countries operating parallel systems of “visas on arrival” and “visa waivers” where the only distinguishing features between

them are provision of a sticker/ vignette bearing the word “Visa” and the payment of a fee. The element of immigration control and the application of entry conditions remain the same between the 2 categories.

The final option, the introduction of an on-line visa application system, has much appeal. It delivers the benefits (listed above) of a traditional pre-travel visa system but makes it fully accessible to anyone who has access to the internet and a means of making an electronic payment.

Free Movement

Free movement, on the other hand, implies the relaxation or, more probably, the removal of visa and immigration controls. However, even without visas, most countries are likely to wish to continue to operate some element of border control. If a country introduces visa free travel to most or all non-citizens but then still examines passengers on arrival and endorses passports or other travel documents with conditions of entry/ an entry permit, is that free movement?

Surely, countries would wish, at minimum, to satisfy themselves as to the nationality and identity of an arriving passenger and to be sure that that person is the rightful holder of a genuine travel document. And, having established the identity and nationality of a traveler, would most countries not also wish to conduct a security database/ stop-list check to see whether s/he is of security interest? So, even without attaching entry conditions to each passenger, surely some level of control must still be applied. If so, is

that genuinely free movement.

The Schengen countries have established a single mutual border where control is exercised by the first point of entry to the Schengen area and all persons, regardless of nationality, may then move freely across borders between Schengen nations. As a consequence, some inter Schengen land borders are barely recognisable as such.

For EU countries which are not members of Schengen e.g. Ireland, other EU citizens (Schengen or otherwise) arriving internationally are subjected to identity, nationality and security checks but are free from entry conditions. This process is increasingly being delivered by electronic gates (e-Gates). In addition, a longstanding bilateral agreement between the UK and Ireland (the Common Travel Area) allows all citizens, once they have legitimately crossed an Irish or UK border point, to move freely between the two countries, similar to the Schengen area.

So is “free movement”:

- the complete absence of any controls;
- limited controls (identity, nationality and security checks);
- the creation of common travel areas between member states of an international community or union?

Or is it simply free of charge, expedited movement across borders where, potentially light touch but non-intrusive controls are operated in the background?

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So, assuming that most, if not all countries would wish to maintain some degree of border control, (except perhaps where deemed unnecessary by pre-existing bi or multilateral agreements or protocols), then it could be argued that free movement is defined by the passenger experience. If a passenger arrives at a border and passes through with the minimum of inconvenience then, with all probability, as far as the passenger is concerned, that constitutes free movement.

However, in order to facilitate that process, the receiving country will need to have cleared passengers in advance of arrival. Visas can fulfill that role. As already covered above, traditional methods of visa issuance via diplomatic or consular missions can be prohibitively expensive to operate and seriously inconvenient to travelers from countries where the government of the chosen destination has no permanent representation.

As the world moves inextricably into the digital age, the numbers of persons with access to the internet has increased exponentially and this surely applies even more so to those who are planning overseas travel. Airlines and other carriers now demand advance passenger information (basically passport biodata) in advance of check-in. Online electronic travel authorisations (ETAs - for pure security checks) or on-line visa applications (which include admissibility assessments) provide the receiving authority with sufficient

passenger information to “pre-clear” impending arrivals. Further ‘freedom’, if deemed appropriate, may be operated on a nationality or visa category basis by waiving the fee. Alternatively, once established, visa systems are cheap to operate and e-visa fees can easily off-set the running costs and, potentially, help to fund other initiatives such as e-Gates.

In conclusion

It is submitted that, whilst many governments and NSAs are perfectly and understandably content with their comprehension of ‘simple’ terms such as visas or free movement it is well worth bearing in mind that others may interpret these terms differently. As a consequence, failure to recognize this, can and does lead to difficulties in implementing visa and free movement agreements and protocols. Agreed, common international definitions would be highly desirable.