CANADA-U.S.
Business Travel Guide

Released February 2013
The advent of global supply chains has led to significant changes in the way manufacturers do business. In today’s day and age, the business of manufacturing is no longer simply about getting a product out the door — it is rather about providing innovative solutions to customers’ problems. Manufacturers now deliver value to customers by embedding their skills, innovation, financing and logistics solutions in the tangible goods they deliver.

To compete and win in today’s environment requires constant interaction between manufacturers and their suppliers, customers, business partners, and services providers. Despite recent advances in information and communications technologies, much business is still conducted face-to-face, and deals are still done with a handshake. Whether it’s engineers working together to develop a new manufacturing process, executives meeting to negotiate a licensing agreement, or industry leaders getting together at a conference to map the future of their sector, creating value requires business people to meet and interact.

Given the intensity of Canada's trade relationship with the United States, this is especially the case between our two countries. Not only are we each other’s largest customer, but our businesses increasingly work together to compete in global markets.

As Canada’s largest trade and industry association, Canadian Manufacturers & Exporters (CME) is committed to helping its members compete and win in domestic and global markets. One way in which we do this is by providing our members with business intelligence that helps them succeed.

With more than four million businesspeople crossing the border every year to do business, facilitating cross-border business travel has become a key Canada-US trade issue. With that number growing every month and government requirements constantly evolving, it is no surprise that CME has been receiving more member inquiries on this issue than even before.

To ensure Canadian manufacturers and exporters have all the information they need to know so they can efficiently cross the border to conduct business, CME partnered with Baker & McKenzie to issue this Canada-US Business Travel Guide. Whether you’re looking to enter the US or Canada, this document will help you find out which visa category best applies to your case, what is required to secure entry into the other country, and what you need to do to obtain a visa. The information is presented in a succinct, easy-to-consult format to help you find the answer to your question effectively.

CME is also continuing to advocate for policy solutions such as the establishment of a trusted business traveler program between the two countries that will further help you conduct cross-border business.

These initiatives are all part of our continued commitment to support our members by leveraging our expertise, connections and the strength of our membership.

We encourage you to consult this document on a regular basis before you, your staff and your business partners cross the border to conduct business and are confident you will find it helpful.

Sincerely,

Jayson Myers
Word from Alan Diner, Partner and Canadian Global Immigration & Mobility Practice Group Leader, Baker & McKenize LLP

Whether you are a world-renowned singer that needs to get on stage before a sold-out audience in Toronto, Ontario, or an equipment manufacturer that must urgently repair a critical piece of machinery at a customer’s plant in Tulsa, Oklahoma, Baker & McKenzie’s Global Immigration & Mobility Practice Group is committed to helping its clients get the right people to the right places at the right time.

In today’s economy, the global movement of executives and employees is critical to business success.

There is often a gap between business necessity and practical reality when it comes to moving executives and staff across jurisdictions. It is therefore important to anticipate and deal effectively with a host of interconnected legal issues and individual concerns such as immigration and visa requirements, tax implications, data privacy mandates, employment rules, stock benefits and compensation, to name a few. We offer comprehensive legal advice on immigration and mobility issues — delivered locally around the world — and have been doing so for more than 50 years.

Knowing firsthand that having the right information can prevent a lot of problems from occurring, we are pleased to partner with Canadian Manufacturers & Exporters by sharing our expertise through this Canada-US Business Travel Guide. This complements our Canada Business Immigration Manual published yearly and available online at http://www.bakermckenzie.com/globalmigration/immigrationmanuals/.

The Canada-US Business Travel Guide provides a general overview of visa categories applicable to business travelers and outlines how those visas may be obtained. We strongly encourage you to consult it prior to your next cross-border business trip as it may save you time and money. This Guide is a comprehensive yet succinct tool to simplify what can sometimes appear as a complex maze of rules. If for some reason you require additional information, advice or documentation on a particular case, we would be pleased to assist you.

In addition to helping you secure visas, Baker & McKenzie’s Global Immigration & Mobility Practice Group can help you plan and implement global transfers and provide on-site coverage to your company and employees in 72 major business centres around the globe. Our lawyers assist both pre- and post-transfer to ensure employment contracts are complete and enforceable, employee benefits meet needs and relevant legal requirements, and tax planning is sound and defensible. Our compliance-driven program allows your business to meet its needs for rapid deployment of people while protecting the company.

We are confident you will find this Guide useful in helping you understand cross-border business visa requirements, and hope it will help you succeed in conducting cross-border business.

Sincerely,

Alan Diner
INTRODUCTION

Word from Stephen Cryne, President & CEO, Canadian Employee Relocation Council

Maintaining the global competitiveness of North American industry is vital to our economic growth and prosperity. Canadian and U.S. businesses are inexorably reliant upon each other. Those businesses span across all sectors of our economy such as manufacturing, finance, pharmaceuticals, engineering and the energy sectors, and many of them would exist not without cross border trade between our two countries.

For many years governments in both countries have given much attention to the movement of goods for the benefit of our economies but, in today’s knowledge based economy, that attention must now envelop the movement of key personnel; employees equipped with the necessary skills and knowledge to keep those businesses running.

According to many leading research groups, such as the McKinsey Global Institute, while the global workforce is expected to grow by about 20 per cent over the next 20 years, we can also expect to see a critical global shortage of skilled workers. It is estimated that shortage will reach more than 13 per cent of the workforce or more than 40 million workers. China will experience the greatest shortage of skilled workers followed by North America.

In such a scenario the expeditious movement of key personnel between Canada and the US will be a business imperative if we are to respond to this shortage and maintain our competitive standing. Key business people must be able to travel between our two countries without complexity and red tape.

Since 1982 the Canadian Employee Relocation Council (CERC) has been educating our members about navigating the complexities of cross border mobility. And although the North American Free Trade Agreement (NAFTA) contains provisions to expedite the movement of certain professionals, those provisions are woefully out of step with the occupations and professions of today’s modern economy.

For these reasons CERC continues to work with government and industry groups, such as the Canadian Manufacturers and Exporters, in Canada and in the U.S. to find ways to modernize these provisions through our support of initiatives like the Beyond the Border Action Plan. While progress has been made on several fronts, much more needs to be done.

Businesses need to have all tools possible at their disposal in order to move their key personnel. CERC is pleased to be a partner with CME and Baker & Mckenzie in making this important guide available. I hope that you will come to rely on it as an in important tool in your cross border mobility programs.

The Canadian Employee Relocation Council (CERC) is a not-for-profit organization dedicated to improving the mobility and deployment of human capital, which are vitally important to Canada’s future prosperity. Established in 1982, CERC represents the interests of its members on workforce mobility matters. Many of CERC’s members are listed in Canada’s Financial Post Top 500.

Sincerely,

Stephen Cryne
Word from His Excellency Gary Doer,
Ambassador of Canada to the United States of America

The Canada-U.S. trade relationship is an excellent example of how partners can benefit from opening their borders to trade.

We recently celebrated the 25th anniversary of the Canada-U.S. Free Trade Agreement. The agreement placed both countries at the forefront of trade liberalization and played a critical role in what is today the world’s greatest free trade success story. Our bilateral trade has reached $716.3 billion, representing some $2.0 billion worth of goods and services crossing the border every day.

Twenty-five years on, history has shown that trade is the best way to create jobs, growth and long-term prosperity for hard-working people around the world. The historic agreement reached in 1987 placed Canada and the United States at the forefront of trade liberalization, and, to this day, is the world’s greatest free trade success story. Since the Canada-U.S. Free Trade Agreement came into force in 1989, Canada’s annual GDP has risen by $1.1 trillion, nearly 4.6 million jobs have been created in Canada, and two-way trade in goods and services with the United States has more than tripled.

The agreement was not just a significant game changer for the Canadian economy — it also dramatically affected how Canadian and U.S. companies do business. Going forward, our success depends on our ability to work together to take advantage of growing opportunities around the world. Achieving this will require that governments and businesses in both countries work together closely to make cross-border business more efficient — that is why we have been focused on meeting the objectives set in the Beyond the Border initiative.

I welcome this initiative to provide Canadian and U.S. business travelers with an easy-to-use guide outlining what they need to know before crossing the border to conduct business. I especially want to thank Canadian Manufacturers & Exporters for their leadership, both in this initiative, and their continued input to our government as to how we can further facilitate cross-border business travel.

Sincerely,

Gary Doer
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### IMPORTANT DISCLAIMER

This publication is intended to provide general information only and is not intended to be a comprehensive exposition of all potential issues arising in the context of cross-border movement of business people.

The information that it contains does not constitute legal or other advice and must not be used as a substitute for legal advice from a qualified legal professional in your jurisdiction who has been fully informed of your specific circumstances.
U.S. Entry Requirements

Unless otherwise noted, the information contained in this section of the document applies only to Canadian citizens seeking to enter the United States for the purposes laid out below. Permanent residents and citizens of other countries should consult the links page at the end of this document to obtain information relevant to their situation.

Overall, Canadian citizens seeking to enter for United States for professional or business purposes can do so under one of the following seven visa categories. Categories 1-4 fall under the North American Free Trade Agreement (NAFTA) and therefore apply to Canadian citizens but not necessarily to permanent residents.

1. Professionals (TN Status)
2. Business Visitors (B Status)
3. Intracompany Transferees (L Status)
4. Traders and Investors (E Status)
5. Temporary Worker (Specialty Occupation – H-1B Status)
6. Exchange Visitor (J Status)
7. Academic Students (F Status)

Each section outlines who may qualify for that type of status or visa, what steps need to be followed to obtain it, what information must be provided and key facts one should know concerning that specific visa category.

Note on Eligibility

Regardless of the type of visa status requested, all foreign nationals applying for visas or admission to the U.S. must be eligible to receive a visa. Ineligibility can arise from certain times of criminal misconduct, past U.S. immigration law violations, health or public security grounds, among others.

For more information about visa eligibility and waivers of ineligibility that may be available, the US State Department provides information at http://travel.state.govvisa/frvi/ineligibilities/ineligibilities_1364.html#visa.

Canadians Entering the United States under NAFTA

1.0 Professionals (TN Status)

A Canadian citizen may obtain work authorization for an initial period of up to three years if they will be going temporarily to the United States to provide services for which they will be remunerated. In order to qualify for NAFTA Professional (TN) status, a number of criteria and conditions must be met.

A professional is someone who:

• practices a profession listed in Annex E to this Guide;
• is qualified and has the minimum education requirement, as listed in Annex E;
• will be working for a US employer;
• will work in a prospective position that requires someone in that specific profession;
• will not be self-employed;
• will be working either part-time or full-time.

What status/visa will be required?

The professional will be given “TN” status, and does not require a U.S. visa stamp issued in the passport.

The same is true for the Canadian citizen’s spouse and/or unmarried child under the age of 21 who the professional wishes to bring along. A visa is required for any non-Canadian Citizen spouse and/or child, and they will need to make an appointment to apply at a U.S. consular post after the professional is given the TN status.

Where does the professional request “TN” status?

“TN” status is usually requested from the U.S. Customs and Border Protection agency at the PreFlight Inspection (“PFI”) Unit at most major Canadian airports or at the Port of Entry (“POE”) inspection stations maintained at border
crossings or airports in the U.S. Under some circumstances for professionals already in the U.S., it is possible to apply to the U.S. Citizenship and Immigration Service (“CIS”). In most circumstances, applying at the POE is the easiest and most efficient process.

No appointment is necessary. A CBP Officer will decide on your application and, if approved, an I-94 card will indicate the professional’s status and the duration of his work authorization.

What documents and forms are required to obtain “TN” status?

• Valid Canadian passport;

• Proof of job offer or contract;
  o in the form of an employment letter detailing the terms of employment, duties and length of employment;

  WARNING: Make the employment letter as precise and complete as possible. One of the most common reasons for rejection at the point of entry is where the employment letter does not adequately describe the work to be done;

  o letter or similar statement signed by the employer indicating the position, salary, employment location and requested length of employment. The position should be clearly identifiable as one of the Annex E professions. The requested length of employment can be for up to three years; and,

  o in situation of consulting arrangements, a copy of the consulting agreement is generally required.

• Qualification document;
  o often in the form of a university degree, certificate and/or evidence of former employment;

• Evidence that the professional qualifies as a professional listed in Annex E;

  o can be diploma or academic transcript showing college degree or, depending upon the requirements of Annex E, a professional license or letter from a prior employer confirming relevant employment experience; and,

• Fee of $50 (US), with an additional $6 (US) at land border crossings.

When does the “TN” status expire?

“TN” status is valid for up to three years. It can be extended in increments of up to 3 years. There are no limits to the number of extensions possible. Length can depend on requested time of employment or passport validity, but will never exceed three years at a time. For instance, a six month contract would provide a basis to ask for up to six months of employment authorization. CBP officers, in any event, seem loathe to provide terms of more than one year for consulting and related activities in the U.S.

Extensions can be requested in two ways. Option 1 does not require leaving the U.S. Option 2 requires returning to the Port of Entry.


2. The professional re-applies at the POE/PFI in essentially the same manner and with the same, albeit updated, documentation as the original application.

Family Visas

A spouse and unmarried children under the age of 21 may be issued TD status for the same period as the TN. They can be admitted under the TD status even if they are not Canadian citizens. Non-Canadian citizen dependents will, however, have to obtain a visa stamp at a U.S. consulate. The TD status spouse and unmarried minor children cannot be employed in the U.S.

Further Information

Additional information about how to apply can be found at the U.S. Embassy in Ottawa’s website at http://canada.usembassy.gov/visas/doing-business-in-america/tn-visas-professionals-under-nafta.html.

2.0 Business Visitors (B Status)

A business visitor is someone who:

• is entering the U.S. to conduct business temporarily; and,

• will not be employed by a U.S. entity.

Some of the most common business activities conducted by business visitors include:
• entering into commercial transactions;
• negotiating contracts;
• consulting with business associates;
• litigation or court appearances;
• partaking in scientific, educational, professional or business conventions, conferences and seminars;
• independent research;
• board meetings where the visitor is a director; and,
• installing, servicing or repairing commercial or industrial equipment purchased from outside the U.S. (see Section 2.1, After-sales service).

The business visitor MUST:
• be entering the U.S. for business purposes;
• be planning to stay for a specific and defined period of time of less than six months;
• have no intention of entering the U.S. labour market;
• have his or her primary source of remuneration outside the U.S.;
• have his or her principal place of business and accrual of profits outside the U.S.; and,
• intend to perform work on a temporary basis in the following areas:
  • Research and Design;
  • Growth, Manufacture and Production;
  • Marketing;
  • Sales;
  • Distribution;
  • General Service; or,
  • After-Sales Services (see section 2.1)

What status/visa will be required?
Business visitors enter the U.S. under B-1 status. If you often travel to the U.S. for the same business purpose, you may want to obtain an I-94 card from CBP to avoid having to re-apply for B-1 entry every time you enter the U.S. for the same business purpose. The I-94 card can be issued for a period of up to six months.

For example, if you are participating in negotiations that will require you to travel to the U.S. on several occasions, an I-94 Form will help you avoid delays at the airport or the risk of not being able to enter the U.S.

Where does the business visitor request “B-1” status?
B-1 entry for Canadians can be obtained at any POE, usually either a land border or at an international airport preflight inspection station, or at a U.S. airport if there is no pre-clearance in Canada. Non-Canadian citizens generally must apply for the B-1 visa at U.S. consular posts. Citizens of certain countries may be entitled to participate in the Visa Waiver Program, described on the U.S. State Department website at http://travel.state.gov/visa/temp/without/without_1990.html.

What documents and forms are required to show proof of NAFTA Business Visitor?
• Proof of Canadian citizenship (passport);
• Letter (preferably from your employer outside the U.S.) describing:
  • the purpose of your business trip;
  • where you will be living;
  • who you plan to visit for business purposes; and,
  • that your primary source of revenue is outside the U.S.;
• Additional documents are required for after-sales services (see section 2.1).

Note: as a general rule, one should bring as much documentation and evidence as possible to substantiate its request for B-1 status.
When does the B-1 visa expire?

The length of the B-1 entry (or I-94) will be determined by the time required to conduct the business purpose. The determination will be made by a U.S. Immigration official. The status can last up to six months and can be extended for up to an extra six months. Entry usually lasts for a few weeks to a few months at which point the business purpose begins to look like work not permitted for B-1 status.

Board of Directors

Members of the board of directors of U.S. companies can be admitted to the U.S. with B-1 visa status when coming to attend a board meeting or perform other functions resulting from board membership. An allowance or other reimbursement for expenses incidental to the trip are permitted, but regular employment remuneration is not. Some people have recently been refused a B-1 visa because they were paid to attend the meetings. In such cases, it can be safer to seek work authorization under another category, such as H-1B, L-1, E or O-1, to avoid being held up at the border.

Family Visas

Spouses and children under 21 are not permitted to enter under the applicant's B-1 visa. They can apply for B-2 tourist status in order to accompany the B-1 holder. They cannot seek employment in the U.S.

Further Information

Additional information about how to apply can be found on the U.S. Embassy in Ottawa's website at http://canada.usembassy.gov/visas/visas/categories-and-requirements/business-travel.html. Although Canadian citizens are not required to apply for the B-1 visa at an American consular post, the instructions provided at the website are good guidance on what to take on business trips to the U.S. to present to the U.S. Customs and Border Protection inspectors at the border.

2.1 After-Sales Service

Under some circumstances, NAFTA authorizes the use of the B-1 business visitor visa status for Canadian citizens who are coming to the U.S. temporarily to carry out installation, repair or maintenance services. To qualify:

- The work must be pursuant to a warranty incidental to the sale of equipment, machinery, or software;
- The product must have been purchased from a business outside the U.S.; and
- The person entering the U.S. must have specialized knowledge that is essential to the performance of services.

After-sales services do not apply to building or construction work, unless the person entering the U.S. is only supervising or training other workers.

Third party service is allowed as long as the sales contract provides for third party installation, warranty or service.

Additional documents required may include:

- a copy of the original sales contract;
- a copy of the sales invoice or work order;
- related warranty and/or service agreement(s), with any extension(s) dating back to the original sale, with no interruptions;
- letter from the employer confirming the employee’s proposed U.S. duties and relevant specialized knowledge.

Further Information

Additional information about how to apply can be found at the NAFTA Secretariat’s website at http://www.nafta-sec- alena.org/en/view.aspx?x=343&mtpiID=147#Ap1603A.1. Although Canadian citizens are not required to apply for the B-1 visa at an American consular post, the instructions provided at the website are good guidance on what to take on business trips to the U.S. to present to the U.S. Customs and Border Protection inspectors at the border.

3.0 Intracompany Transferee (L Status)

The intracompany transferee or L visa allows U.S. employers to transfer executives, managers, or employees with specialized knowledge, from a parent, subsidiary, branch or affiliate entity outside the U.S. to one of its U.S. offices (again it should be noted that the information below is intended for Canadian citizens).
What is a qualifying organization?

- the foreign company and the U.S. company must have at least 50% common ownership or one must effectively control the other;
- a firm, corporation or legal entity that continues to do business in the U.S. and at least one other country during the L holder’s stay:
  - doing business is defined as providing goods and services on a regular business; the mere presence of an office or an agent abroad does NOT qualify as doing business;
- does not have to be engaged in international trade; and,
- can be for a profit, nonprofit or religious organization.

An intracompany transferee is someone who:

- has been employed outside the U.S. by the foreign organization for at least one of the past three years;

primarily in an executive or managerial capacity or a capacity involving specialized knowledge of the company; and,

is coming to the U.S. to be primarily employed in an executive or managerial capacity or a capacity involving specialized knowledge of the company:

- the employee does not have to transfer to serve in the same position, as long as they perform one of the three permitted positions in the U.S. (unlike in Canada where the authorities insist on the same type of position abroad).

L-1A status is for executives and managers. L1-B status is for employees with specialized knowledge. Whether the employee is classified as L-1 A or L-1 B depends on the nature of the position in the U.S. If an employee qualifies for both, it may be best to apply for the L-1A visa, because the maximum stay is two years longer than the L-1B visa, and because the pathway to U.S. permanent residence is faster, should the temporary transfer became permanent.

Definitions

A manager is someone who primarily:

i. manages the organization, a function, or some part thereof;

ii. supervises other managerial, supervisory or university degreed professional employees, or manages an essential function, department or subdivision;

iii. has the power to hire and fire employees or recommend such actions; and,

iv. has day-to-day discretion with respect to the operation of the organization.

An executive is someone who primarily:

i. directs the management of the organization;

ii. establishes policies and goals;

iii. has discretionary decision-making capacities; and

iv. is only supervised by higher level executives or the organization’s board of directors.

A person with specialized knowledge is someone who has:

i. uncommon knowledge of the organization’s products, services, research, equipment, techniques, management or other interests and its application in international markets; or

ii. an advanced level of knowledge or expertise in the organization’s processes and procedures.

The knowledge must be specialized to the company, rather than knowledge common to the industry. Be prepared to explain in detail how the knowledge was acquired through work at your company outside the U.S. and how that knowledge will help the company compete internationally. Although one year is the minimum length of employment needed to qualify and seems to work well enough for managers and executives, longer periods of work experience increase the likelihood that a specialized knowledge claim will prevail.

New Office

A company can apply for an L-1 if it is opening a new office, branch, subsidiary or affiliate in the U.S. In addition to the above listed qualifications, the foreign employer will have to show that physical premises for the new office have been secured and that the new U.S. office will support an executive or managerial position in the year following the approval of the petition.
Required documents:

- evidence of the creation of a U.S. entity;
- registration of the U.S. entity or office with state and federal tax authorities;
- evidence of the ownership/control relationship of the two companies, including funds transferred to acquire ownership of the other company;
- evidence of the office lease; and
- business plan for the U.S. office, including proposed hiring during the next one to three years.

Length of stay and extension

Employees being transferred to the U.S. to work for a new entity will be given a one year period of stay at the outset. Extensions in increments of up to two years may be obtained with proof that the organization still exists and is doing business in the U.S. A statement of the employee’s duties, evidence of employees in the U.S. office and wages paid, as well the U.S. office’s financial status and updated business plan should be submitted.

How to apply

Canadian citizens may submit an L-1 petition at a POE/PFI or the petition can be filed with the USCIS. POE/PFI processing by the CBP immigration inspector is usually filed one to two hours prior to entering the U.S. or boarding a flight and, if successful, the inspector issues an I-94. L-1 petition processing by the USCIS usually takes many months, about a 15-day processing service is available for an extra government fee. Traveling employees should allow several hours before their flight, or the time they wish to enter the U.S. It would also be wise to travel during normal business hours so that the port of entry may seek assistance if necessary.

Alternatively, USCIS processing usually takes two months, but a 15-day expedited service is available for an additional fee. The USCIS issues an I-797 approval notice, which can then be presented at the POE/PFI as proof that the L petition has already been approved. The CBP immigration inspector can then issue the I-94 promptly.

Blanket L-1 Visas

Note that NAFTA provides Canadian citizens with processing advantages that call into question the utility of the Blanket L-1. This information is provided primarily with non-Canadian citizen employees in mind.

If the transfer of intracompany employees is very frequent, a qualifying organization may wish to file an L-1 blanket petition for continual approval of itself, its parent and some or all of its branches, subsidiaries and affiliates as qualifying organizations for the purposes of transferring employees.

The Blanket L is shares the same L-1A requirements as the regular L-1A. The requirements for the L-1B are more restrictive under the Blanket L, however, with benefits limited to university degreed professionals coming to work in a profession.

The Blanket L is only available to multinational organizations doing business in the U.S. for at least one year with with three or more offices in the US and abroad. Further, the company must meet one of the following criteria:

- At least 10 L-1 approvals during the previous 12 months;
- U.S. subsidiaries or affiliates with combined annual sales of at least $25 million; or
- U.S. workforce of at least 1,000 employees.

If the blanket petition is approved, individual petitions do not have to be filed with the USCIS for each employee. Employees can produce the blanket L application at a POE/PFI.

The initial blanket period will usually last three years with infinite possibility for extension. However, if an extension is not approved, the company will have to wait three years before filing for a new blanket.

The blanket application must be submitted to a USCIS service center with evidence of all required qualifications listed above.

What are the required documents and forms?

L-1: Intracompany Transferee (blanket petition)

- Valid Passport (at least 6 months);
• Older passports containing previous visas;
• Documents substantiating previous legal status in U.S.;
• Original or copy of Notice of Approval (Form I-797A or I-797B) if applicable;
• Current employment letter indicating the executive, managerial or specialized nature of the proposed U.S. work, duration, and salary;
• Recent paystub/payslips;
• Copy of Petition for a Nonimmigrant Worker Form (I-129), as completed and signed by employer;
• Proof applicant employed one out of three years abroad by the employer in an executive, managerial, or specialized knowledge capacity; and,
• Proof employer abroad still exists.

How long does the visa last?

L-1 visas are usually granted at the outset for a maximum of three years and can be renewed in two-year periods. For executives and managers, the maximum stay is seven years. For specialized knowledge employees the maximum stay is five years.

The limitations on maximum stay do not apply to employees who will work in the U.S. for an aggregate of six months or less per year, or to employees who reside abroad and regularly commute to the U.S. for part-time employment.

Family Visas

Spouses and children under the age of 21 of L-1 visa holders may receive L-2 dependent visas to accompany the L-1 holder to the U.S.

After arrival in the U.S., an L-1 spouse may apply for an employment authorization document, which authorizes work for any employer or even self-employment. Usually, the authorization is issued for the same period as the L-2 status. There are no minimum education or experience requirements for employment of the spouse.

To get a work authorization, spouses must file an I-765 Application for Employment Authorization with the USCIS after arrival in the U.S. The applicant will be required to provide the I-94, the L-1 holder’s I-94, a copy of the marriage certificate, the filing fee and proof that the L-1 spouse continues to be employed by the qualifying organization.

Further Information

Additional information about how to apply can be found on the US Embassy in Ottawa’s website at http://canada.usembassy.gov/visas/visas/categories-and-requirements/intra-company-transfer.html. Although Canadian citizens are not required to submit the L-1 visa petition to the USCIS or apply for the L-1 visa at an American consular post, the instructions provided at the web site are good guidance on what to take to the US to present to the US Customs and Border Protection inspectors at the border for L-1 visa status processing.

4.0 Traders and Investors (E Status)

The U.S. and Canada have treaties that provide E visa benefits for qualified Canadian-owned companies and their Canadian citizen employees. The E-1 Treaty Trader visa is for individuals coming to direct or work at companies carrying out a substantial volume of primarily Canada-U.S. trade. The E-2 Treaty Investor visa is for individuals coming to direct or work at U.S. companies in which there is a substantial Canadian investment.

Treaty Trader E-1 Requirements

• The applicant must be a citizen of a treaty country (Canada is a treaty country);
• The applicant must either be a majority owner coming to manage and direct the U.S. company or an employee coming to be employed in a supervisory or executive capacity, or possess skills essential to the business;
• The sponsoring company in the U.S. must be majority owned and controlled by citizens of the same treaty country as the applicant;
• The trade can be goods, services, and/or technology;
• The volume of trade must be substantial; and,

• The majority of the trade must be between the U.S. and the treaty country.

Treaty Investor E-2 Requirements

• The applicant must be a citizen of a treaty country (Canada is a treaty country);

• The applicant must either be a majority owner coming to manage and direct the U.S. company or an employee coming to be employed in a supervisory or executive capacity, or possess skills essential to the business;

• The sponsoring company in the U.S. must be majority owned and controlled by citizens of the same treaty country as the applicant;

• The investment must be in a real, active commercial enterprise;

• The invested funds must be “at risk” of loss in the enterprise;

• The investment in the U.S. must be substantial; and,

• The investment cannot be marginal (i.e., only generates sufficient income to provide a living to the investor and family.

How long does the E visa last?

E visas are issued for up to five years. There is no limit to the number of five year extensions of the visa, so long as the visa holder maintains an intention to leave the U.S. when the trading or investment enterprise ends.

Family Visas

Treaty traders and investors may be accompanied by their spouse and unmarried children under the age of 21. The family members may seek E-1 or E-2 status as dependents and will generally be granted the same period of stay as the employee. Additionally, spouses of Treaty Traders and Treaty Investors may apply for an employment authorization document to work in the U.S.

Further Information

Additional information about how to apply can be found on the US Embassy in Ottawa’s website at http://canada.usembassy.gov/visas/visas/categories-and-requirements/treaty-trader-or-investor.html. Canadian citizens must apply to a U.S. consular post to be issued the treaty trader or investor visa.

Canadians Entering the United States Outside of NAFTA

5.0 Temporary Worker (Specialty Occupation) (H-1B Status)

A H-1B temporary worker is someone who:

• will work temporarily in the U. S.; and

• will be employed in a “specialty occupation”.

What is the purpose of an H-1B visa?

The primary purpose of the H-1B visa is to admit persons to be employed in a “specialty occupation” to perform services in the U. S.

How to obtain an H-1B visa - Steps to be taken by the employer:

In order to obtain an H-1B visa, a petition must be filed on behalf of the employee by the U.S. employer or the employer’s agent. The employer must have a Federal Employer Identification Number issued by the Internal Revenue Service, and must be a person, corporation, contractor, or other association or organization with a place of business in the U.S.

The employer must show that the position which the person will fill is a “specialty occupation”. A specialty occupation is one that requires:

• the theoretical and practical application of a body of highly specialized knowledge; and

• a bachelor’s degree or higher in the specialty (or its equivalent) as a minimum for entry into the occupation in the U. S.
Specialty occupations include engineers, doctors, teachers, accountants, lawyers, etc.

The employer’s petition must demonstrate why the position is a specialty occupation by submitting evidence that either:

• A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

• The degree requirement is commonly required within the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

• The employer normally requires a degree or its equivalent for the position; or

• The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Additionally, the employer must prove that the person is qualified to engage in that specialty occupation. This generally requires submission of academic documents showing that the person has at least the equivalent of a relevant four year university degree from an American academic institution. Foreign studies and work experience can be considered when making the equivalency evaluation. For positions that require a license or certification (e.g., medical doctor, psychologist, attorney), the employer must generally also submit documentation that the person is lawfully able to carry out the proposed job duties.

Before filing the petition with the USCIS, the employer must first receive an approved Labor Condition Application (LCA), Form ETA-9035, from the Department of Labor (DOL). Employers can file this application via the Internet. The employer must make certain attestations, including that the wages, benefits, and working conditions are at least equal to the average given to similar workers at that location of the employer or of all employers in the same geographic area, whichever is higher. Notice of the filing must be made publicly available to employees at the intended place of employment for at least ten business days. If the employer violates the terms of the LCA, the DOL may enforce civil and/or criminal penalties against the employer, including or temporarily or permanently barring the employer from applying for permission to hire other persons in H-1B status.

Additionally, the employer must certify that, if the person is dismissed before the expiration of the H-1B status, the employer(659,362),(739,383) will be liable for the reasonable costs of the person’s return transportation abroad, regardless of whether termination was for cause or at will. If the person terminated the employment relationship voluntarily, the employer is not obligated to pay the return transportation costs.

The procedure to sponsor Canadian citizens and non-Canadians is essentially the same, except that Canadian citizens do not make appointments at U.S. consular posts to have the H-1B visa issued in the passport. Instead, they can present the I-797 approval notice and their Canadian passport to be admitted to the U.S. by the Immigration Inspector.

**What are the required documents and forms for non-Canadian citizens?**

• Printout of DS-160 Confirmation Page with legible bar code;

• Valid Passport (at least six months);

• Proof of legal status in Canada (original or certified copy);

• Older passports containing previous visas;

• Documents substantiating previous legal status in U.S.;

• Original or copy of Notice of Approval (Form I-797A or I-797B);

• Current employment letter indicating the nature of work, duration and salary;

• Recent paystub/payslip;

• Copy of Petition for a Nonimmigrant Worker (Form I-129), as completed by employer and filed with the USCIS;
• Copy of approved LCA;

• If previously under J-1 status in U.S., applicant needs waiver of 2 year foreign residence rule;

• Evidence of qualifications must be original document or a certified copy. Consular officers in Canada may refuse to issue a visa to H-1B applicants if their education and/or work experience is solely or predominantly from a country other than the U.S. or Canada;

• Consular officers in Canada may refuse to issue a visa to first-time H1B applicants if the applicant’s education and/or work experience is solely or predominantly from a country other than the U.S. or Canada. In the absence of U.S. or Canadian education or work experience, we strongly encourage you to apply from your country of residence; and,

• Attestation indicating whether or not the application is subject to the Border Security Fee and, if so, payment of US$2,000 Border Security Fee.

How long does the visa last?

The H-1B visa is granted for up to three years. It can be extended in increments of up to three years. There is a general limit of a maximum of six years, with some exceptions for persons for whom employment-based permanent resident applications are pending. Otherwise, once a person has been in the U.S. for six years in H-1B visa status, the person must spend at least one year outside the U.S. before becoming eligible for a new H-1B visa.

Family Visas

Spouses and minor children of H visa holders may receive dependent H-4 visas. H-4 spouses and children are not authorized to work in the U.S.

Further Information

Additional information about how to apply can be found on the US Embassy in Ottawa’s website at http://canada.usembassy.gov/visas/visas/categories-and-requirements/temporary-worker-distinguished-merit-other-than-nurses.html. Canadian citizens do not apply to a U.S. consular post for the H-1B visa and can obtain more information on the USCIS website at http://www.uscis.gov/portal/site/uscis/menuitem.e1d4c2a3e5b9ace89243c6a7543f6d1a/?vgnextoid=73566811264a3210VgnVCM100000b92ca60aRCRD&vgnextchannel=73566811264a3210VgnVCM100000b92ca60aRCRD. They can present their USCIS H-1B petition approval to the U.S. Customs and Border Protection inspector at the airport pre-flight clearance unit or border crossing.

6.0 Exchange Visitor (J Status)

An exchange visitor is:

A student, teacher, professor, research scholar, or other professional seeking to participate in U.S. government-approved exchange programs.

What is the purpose of the J Visa?

The purpose of the J visa is to promote mutual understanding between people of the U.S. and other countries through educational and cultural exchanges.

The uses of the J visa are diverse. It is used for students to attend school, and for academics to teach and engage in research. There are J visa programs for au pairs and summer camp counselors.

Of particular interest are J visa programs that allow hands-on training in a productive work environment. These programs are often aimed at students at universities outside the U.S. coming for internships related to their academic program or graduates of universities outside the U.S. coming for training in a work environment in the U.S. that will enhance their career opportunities abroad.

The U.S. State Department has given authorization to many universities, organizations and even private employers to administer J visa programs. Employers interested in the J visa can apply through these authorized J programs. The J-1 Program does not require employers to submit an application through the USCIS. This process is usually faster than the process for obtaining other work visas.

It is important to note that some, but not all, J visa holders are subject to a requirement that they return to their home country for at least two years after use of the J visa before
being eligible to be issued certain temporary and immigrant visas. This “home residence requirement” generally applies only to:

• Graduate medical education or training program participants;

• Participants in programs funded in whole or in part by the U.S. government or the J visa holder’s home government; or

• Participants in programs that provided training in skills designated by the U.S. government on its Exchange Visitor Skills List as in short supply in the J visa holder’s home country.

How long does the visa last?

The duration of the J visa is normally the length of time needed to complete the program plus thirty days. However, there are general limitations on the duration of visas held by certain categories of persons such as:

• business interns (one year);

• business trainees (18 months); and

• specialists (one year).

These are maximum limitations only and do not extend the period for which the person’s visa would otherwise be valid.

Family Visas

Spouses and minor children of J visa holders may receive dependent J-2 Visas. The J-2 spouse may apply for employment authorization. Employment authorization will not be approved if the income is needed to support the principal J-1 visa holder.

What are the required documents and forms?

• Printout of DS-160 Confirmation Page with legible bar code;

• Valid Passport (at least 6 months);

• Older passports containing previous visas;

• Documents substantiating previous legal status in U.S.;

• Reciprocity fee (if applicable);

• DS-2019;

• Form DS-7002 (interns and trainees only);

• Proof of sufficient funds to cover all expenses while in the U.S.;

• Proof of ties/residence in country outside U.S. which have no intentions of abandoning;

• SEVIS (Student/Exchange Visitor) Fees (please note 30-day policy);

• Consular officers in Canada may refuse to issue a visa to foreign nationals temporarily in Canada if the visa applicant cannot show proof of ties and intention to return to their home country at the end of the J visit. People who do not apply form their home country are often thought to have weaker ties there. For this reason, we strongly encourage you to apply from your country of residence.

Further Information

Additional information about how to apply can be found on the US Embassy in Ottawa's website at http://canada.usembassy.gov/visas/visas/categories-and-requirements/exchange-visitor.html.

7.0 Academic Students (F Status)

An academic student is:

A person who will be in the U.S. temporarily to pursue a full-time course of study at an approved educational institution.

What are the employment opportunities for F visa holders?

An F-1 visa holder is permitted to accept employment only under limited circumstances. The visa holder can work on-campus full-time during vacations and holidays, but no more than 20 hours per week during the academic year and only if the educational institution approves such employment.
F-1 visa holders may also work off-campus pursuant to “Curricular Practical Training”. In order to do so the visa holder must be in good academic standing and obtain the approval of a designated school official. As with on-campus employment, the visa holder can work no more than 20 hours per week during the academic year, but may work full-time during holidays and vacations.

Employment that qualifies as “Optional Practical Training” may also be permitted after graduation if approved by the USCIS. To qualify, the student must have graduated and the training position must be directly related to the student’s major field of study. Optional Practical Training is normally limited to a maximum of 12 months and must be completed within 14 months of graduation. However, students granted Optional Practical Training after completing a sciences, technology, engineering or mathematics (“STEM”) degree may apply for a one-time 17-month extension if the employer is registered with the E-verify program.

How long does the visa last?

The length of the F visa will usually be for the duration of student status, so long as the student maintains a full course of study and is in good standing, plus any period of authorized optional practical training, plus an additional 60 days.

Family Visas

Spouses and minor children of F-1 visa holders may receive dependent F-2 visas. F-2 visa holders are not eligible for employment authorization documents.

What are the required documents and forms?

- Printout of DS-160 Confirmation Page with legible barcode;
- USCIS Form I-20;
- Valid Passport (at least 6 months);
- Proof of legal status in Canada (original or certified copy);
- Older passports containing previous visas;
- Documents substantiating previous legal status in U.S.;
- Reciprocity fee (if applicable);
- Proof of sufficient funds to cover all expenses while in U.S.;
- Proof of ties/residence in country outside the U.S. which have no intentions of abandoning;
- SEVIS Fees (please note 30-day policy);
- Consular officers in Canada may refuse to issue a visa to first-time F1 applicants if the applicant’s education and/or work experience is solely or predominantly from a country other than the United States or Canada. In the absence of U.S. or Canadian education or work experience, we strongly encourage you to apply from your country of residence.

Further Information

Additional information about how to apply can be found on the US Embassy in Ottawa's website at http://canada.usembassy.gov/visas/visas/categories-and-requirements/student.html.

Compliance and Audit Strategies

This sub-section is intended mostly for professionals responsible for ensuring their company and employees comply with the rules affecting foreign workers.

We encourage employers to implement an audit system which can address the genuineness of employment offers made to any and all foreign workers employed during the past two years in order to take the appropriate corrective action necessary. We suggest the following 10-step process to ensure that you audit your foreign workers and have no surprises:

1. Adopt a formal Human Resources (HR) compliance program for foreign workers. Create a centralized database to track these workers and appoint a compliance officer to be a point of contact to monitor all Temporary Foreign Workers (TFWs) in the U.S. and Canada;

2. Ensure all authorizations are current, including immigration and social insurance paperwork. Ensure all documentation is up-to-date and properly filed;

3. Ensure HR representatives are in a position to abide by all representations made to the government in TFW applications;
4. Audit all foreign workers regularly — preferably every six months, and at a minimum, once annually — including verification of current position and salary, comparing these against immigration documentation;

5. Report all significant or material changes in employment or salary to government, and/or amend status documentation;

6. Apply for extensions early;

7. Provide immigration resources for foreign workers, including information about pathways to permanent residence, and rules about leaving the country during implied status or other delicate immigration times;

8. Provide a central HR contact for TFW questions;

9. Have your audit process set out in a cover letter from counsel, to be able to claim solicitor-client privilege in results of the audit; and

10. Should issues become apparent, work with counsel to address and resolve issues, and assist with the audit if necessary, or where issues arise during the due diligence process.

**I-9 Form**

All employees and employers are required to complete I-9 Forms for business visits. Failure to comply with employment eligibility verifications could result in serious sanctions.

- Employers are required to verify the employment eligibility of all employees within three days of hire, through the I-9 Form.

- Employees must at the time of hire, attest, under penalty of perjury that he or she is authorized to work in the U.S. as a nonimmigrant with a time limit form of work authorization. Within three business days of hire, the employee must also submit certain original documents that establish identity and employment authorization to the employer for review.

- Once the employer has reviewed the employee’s documents, it must complete the second portion of the form by registering the type of documentation provided, the document number and the expiration date, if any. If the employee has provided a document expiration date in the employee’s section of the I-9 form, the employer must also re-verify the employee’s employment eligibility before that date has passed.

The employer must retain the completed I-9 Form for at least three years or one year after employment terminates, whichever is later.

**Consequences of Non-Compliance**

It is important to respect the requirements of your work visa, such as the duration of your stay and the type and scope of duties you are allowed to perform. Staying in the U.S. longer than allowed for, even by one day, can cause serious sanctions to be imposed on the visitor. The visitor may be ineligible for a visa in the future or may have to pay substantial fines.

**Further Information**


**Frequently Asked Questions**

1. **Denied Entry** — Does having previously been denied entry into the U.S. due to improper documentation impede my ability to enter the U.S. in the future for business or leisure, even if I have all the proper documentation?

   A previous denial is likely to detrimentally impact future applications for entry. It will be important to acknowledge the reasons for the prior denial and explain why admission is now proper. There are no limits to the number of times you can apply and a prior denial does not automatically bar you from all future travel.

2. **Criminal Record** — Does having a prior criminal conviction ban one from entering the U.S. to work or conduct business?

   Sometimes. U.S. law prevents entry to individuals convicted of or who admit to committing certain crimes. It is important to have certified copies of court or police records to show the final disposition of any arrest or court charges. Canadian visitors are most often denied access to the U.S. because of drug-related offences, and “crimes involving moral turpitude,” which are crimes involving...
dishonesty. There are however a few exceptions. If the visitor has only committed one crime, it was committed when the visitor was under 18 years of age and the crime was committed more than five years before the date of application for admission to the U.S., the visitor can be admitted. The visitor will also be allowed entry where only one crime was committed by the visitor and the maximum penalty possible for the crime committed does not exceed one year of imprisonment, and the visitor was not sentenced to imprisonment for a term greater than six months.

3. **Expired Warranty** — We are sometimes called by U.S. customers to service equipment no longer under warranty. How can we legally help our client despite the equipment no longer being covered by our original after-sales contract?

The B-1 visa status will not authorize travel to the U.S. for after-sales services under an expired warranty, but may be permitted if you present documentation that the warranty was extended and is still in effect.

4. **Canadian Subsidiary of a US Corporation** — We are the Canadian subsidiary of a US-based corporation providing consulting and professional services. Our Canadian staff and Canadian-paid staff sometimes travel to the U.S. to attend meetings with our Canadian clients, usually at our client’s U.S. office. This always creates confusion and uncertainty for U.S. Customs and Border Protection officials, which leads to our staff usually being questioned and delayed when crossing the border. How can we prevent this situation from reoccurring?

The employees should carry a letter from the Canadian employer that introduces the company and explains the limited purpose of their trip. For short business trips to attend meetings, negotiate contracts, visit trade shows, etc., this is usually sufficient. If the Canadian employees spend extensive periods of time in the U.S., this increases concerns that they may be engaging in productive work. Work visas (e.g., TN, L-1) can be used even for staff who only intermittently work in the U.S., but otherwise carry out their regular duties in Canada.

5. **Permanent Resident** — Are the procedures outlined in this guide any different for Canadian permanent residents that do not hold Canadian citizenship?

Yes, the procedures are different for Canadian citizens and Canadian permanent residents. Permanent residents can still qualify for entry to the U.S., but will have to do so under general U.S. immigration provisions. Canadian citizens enjoy the additional benefits under NAFTA described in this guide.

6. **What is the normal entry period provided to Canadian citizens for business visits, and how easy is it to extend business visits from within the U.S.**?

The normal entry period will depend on the type of visa under which you are entering the U.S. Refer to the section which applies to you to learn more about the allowed time periods and the possibilities for extension. The procedure to extend is usually similar to the procedure to acquire the status initially, with equivalent processing times, fees, etc.

7. **What are the consequences of doing some tasks not identified as part of business activities?**

Performing work that is outside the scope of your visa could put you and your employer at risk. An employer may find it difficult to sponsor new visa requests and may be subject to other penalties. You could be ordered removed and made ineligible for future visas or even from entering the U.S. if the violation is serious enough.

8. **What are the rules and requirements for I-9 cards for Canadians, and must they be completed for extended business visits?**

All employers are required to complete and retain I-9 Forms for anyone employed in the U.S. The I-9 does not apply to business visitors employed abroad and coming to the U.S. on B-1 business trips. Failure to comply with employment eligibility verifications could result in serious sanctions.

- Employers are required to verify the employment eligibility of all employees within three days of hire, through the I-9 Form.
- Employees must at the time of hire, attest, under penalty of perjury that the employee is authorized to work in the US and must submit certain original documents that...
establish identity and employment authorization to the employer for review.

- Once the employer has reviewed the employee’s documents, it must complete the second portion of the form by registering the type of documentation provided, the document number and the expiration date, if any. If the employee has provided a document expiration date in the employee’s section of the I-9 form, the employer must also re-verify the employee’s employment eligibility before that date has passed.

- The employer must retain the completed I-9 Form for at least three years or one year after employment terminates, whichever is later.

9. At what point are there tax consequences for Canadians visiting or working in the U.S. as individuals, and at what point should employers be concerned about U.S. tax consequences?

Compensation for employment in the U.S. is subject to U.S. federal and state payroll and income taxes regardless of the amount or number of days spent in the U.S. Further, taxes on income earned anywhere in the world may be imposed by the U.S., if the visitor is present for an aggregate of more than 183 days in the U.S. using a formula that considers a percentage of days spent over the last three years. There is a treaty in effect between Canada and the U.S. to avoid double taxation in the U.S. of income taxed by Canada for work done in Canada. Payroll tax withholding for employers is generally based on the location where the employee works to earn the money, rather than the location of the employer who pays the money. A Canadian employer with an employee working in the U.S. can unwittingly subject itself to U.S. and state payroll tax, and even corporate income tax obligations without careful planning.

10. When does it become an issue to bring over tools and equipment to perform the duties required in the U.S.?

If you have the proper visa authorizing the work that requires those tools, there should not be a problem for bringing tools and equipment to perform the duties required, unless there are specific laws relating to customs. It would however be helpful to have a letter from the employer specifying the need for such materials.

Important Notice — Western Hemisphere Travel Initiative

A citizen of Canada must have a valid Western Hemisphere Travel Initiative compliant document to enter the U.S. regardless of the circumstances.

For purposes of establishing identity and citizenship, Canadian citizens entering the United States at sea and land ports-of-entry are required to present one of the following documents valid for the entire period of intended stay: a valid passport issued by the Government of Canada; a Trusted Traveler Program card (NEXUS, FAST, or SENTRI); or an Enhanced Driver’s License.

U.S. and Canadian citizens under age 16 may present only proof of citizenship, such as a birth certificate or Naturalization Certificate.

For further information on WHTI-compliant documents and requirements for special populations, please visit the “Get You Home” Web site: http://www.getyouhome.gov/.
Canadian Entry Requirements

Flow Chart for Temporary Entry into Canada:
Determine which visa category is best suited for your needs

**DO YOU NEED A TEMPORARY RESIDENTVisA?**
- You do not need a visa if you are a U.S. citizen, a US Green Card holder, or a national listed in Annex A.

**DO YOU NEED MEDICAL TESTS?**
- Generally, only if coming to Canada for more than six (6) months (Comment: not if coming from the U.S.), or if you are listed in Annex B.

**ARE YOU EXEMPT FROM A WORK PERMIT (COMMENT: THE FOLLOWING IS A MIX OF BUSINESS VISITORS AND WORK-PERMIT EXEMPTIONS, BUSINESS VISITORS BEING ONE – SEE ANNEX D)?**
- Research
- Public Speaking
- Diplomats
- Religious Workers
- Sales Negotiations
- Training
- Members of Armed Forces
- Conference Organizing Committees
- Board Meetings
- After-Sales Services
- Athletes
- Emergency Workers
- Conventions
- News Reporters
- Students
- Transportation Workers

**IS A LABOUR MARKET OPINION (LMO)-EXEMPT WORK PERMIT AVAILABLE TO YOU?**
- NAFTA Professionals (see Annex E)
- GATS
- Post Graduation
- Dependent Children
- NAFTA Traders and Investors
- Reciprocal employment
- Post-doctoral Fellows
- Significant benefits
- Intra-company transferees
- International Students
- Spouses

**DO YOU QUALIFY FOR AN LMO-BASED WORK PERMIT?**
- Labour Market Opinion (LMO)
- Accelerated Labour Market Opinion (A-LMO)
- LMO with “variation” (exemption) from advertising (see Annex F)

**ARE YOU ADMISSIBLE?**
- Do you have any criminal charges or convictions?
- Do you have any serious medical conditions?
- Are there any other grounds for inadmissibility that may prevent or delay your entry to Canada?

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1 These categories contained in the lists are samples and not intended to be exhaustive lists.

Disclaimer: this publication is intended to provide general information only, does not constitute legal or other advice, and should not be used as a substitute for legal advice from a qualified legal professional in your jurisdiction who has been fully informed of your specific circumstances.
Basic Rules for Entry

Unless explicitly stated, the information contained in this section of the document applies to U.S. citizens seeking to enter Canada for the purposes laid out below. Permanent residents and citizens of other countries should consult the links page at the end of this document to obtain information relevant to their situation.

An application for entry into Canada will vary depending on a number of factors including the nature and duration of the trip to Canada.

In general, foreign nationals who intend to enter Canada on a temporary basis are admitted in various categories under the tourist, business visitor, student or temporary foreign worker programs and may apply at Citizenship and Immigration Canada visa offices, inland offices, or Ports of entry, depending on the facts.

In most circumstances, U.S. citizens and Green Card holders can apply directly at a Canadian Port of Entry (“POE”).

Temporary Resident Status

Temporary residents are foreign nationals that enter Canada for pleasure, business work, or studies, and are authorized for their stay. U.S. citizens and Green Card holders are visa exempt which means that they are not required to obtain a Canadian temporary resident visa to enter Canada. Other non-U.S. citizens, listed in Annex A, may also enter Canada without such a visa. However, in most cases applicants who can enter Canada without a visa are required to obtain work or study permits if they entering Canada to work or study. Nationals of any country not listed in Annex A are required to obtain a temporary resident visa (TRV) to enter Canada, and will need to apply at a Canadian mission abroad. If the foreign national is permanently or temporarily residing in the U.S., he or she may apply at one of five U.S. visa offices (Los Angeles, Detroit, Seattle, Washington D.C., and New York). There, a visa officer will consider whether the applicant:

- has properly applied for a visa and is a visitor, student, or temporary foreign worker;
- will leave Canada by the end of the authorized period;
- holds the proper documents to get back into his/her country of origin or another country;
- has sufficient funds to support himself/herself during the temporary stay in Canada; and
- is not otherwise inadmissible (e.g. by reason of criminality, medical condition, etc.).

How long does the stay last?

A temporary resident is permitted to stay in Canada for a limited period of time, which varies according to the category.

Pleasure or business visitors can be granted anywhere from a minimum stay of a few days, to a maximum stay of six months, and may apply to extend their stay from within Canada before their status expires.

Temporary foreign workers and international students may be issued stays of several years, depending on the circumstance.

A temporary resident’s authorized period of stay in Canada ends on the earliest of:

- the day on which the person leaves Canada without prior authorization to re-enter;
- the day on which a work permit or study permit expires;
- the day on which a temporary resident permit is no longer valid; or
- six months after the date of entry, if no other date has been specifically authorized.

How do you extend work or study permits?

Temporary residents may submit an application to Citizenship and Immigration Canada (“CIC”) to change conditions or extend status in Canada, through Case Processing Centre (“CPC”) Vegreville. Where individuals including U.S. citizens are visa-exempt, they may renew their status authorization by exiting Canada and reapplying at a POE — this is sometimes referred to as “flagpoled”. If not a U.S. citizen or Green Card holder, these individuals intending to flagpole at a U.S. border crossing should hold a U.S. visa, or be visa waived, as complications could otherwise arise.
Medical Requirements

Medical examinations are required for those who:

1. are going to work in one of the positions listed in Annex B, no matter what their nationality; and/or
2. have resided for 6 months or more in the past year, in a country not listed in Annex C., and are coming to Canada for a period of six months or more.

Business Visitors

Who is a Business Visitor?

A Business Visitor is a foreign national who enters Canada seeking to engage in international business activities without entering the Canadian labour market. As per the Canadian Entry Flow Chart provided above, American business visitors wanting to enter Canada should first consider this category if the criteria are met in order to facilitate their entry and reduce processing times and costs.

To engage in international business activities without entering the Canadian labour market, the following must all reside outside of Canada:

- the visitor’s primary source of remuneration for the business activity;
- the principal place of business; and
- the actual place of the accrual of profits.

What are business activities and what is work?

Business activities include:

- internal (e.g. intra-company) or client business meetings, conference and seminars;
- discussions and consultations, negotiations, limited research activities and soliciting business;
- consulting with a customer about possible sales of a product or service;
- receiving project or customer updates or progress reports; and
- attending a meeting as a member of a Board of Directors (business visitors may be remunerated by the Canadian enterprise for this purpose).

Business activities do NOT include:

- engaging in the production of goods or other hands-on work;
- providing services that benefit the customer including consulting, time and hour work, and repair of a product not covered by warranty, or installation work generally performed by construction or building trades, such as electricians;
- managing a project or account;
- supervising other employees; and
- rendering professional services for which fees are paid (even if only for an hour).

In short, there is a very gray line between “work” and “business”. The nature of the duties and the contractual arrangement, and any entry into the labour market (i.e. competition with Canadian workers), rather than the time spent in Canada determine whether a work permit is required. Specific examples of business as opposed to work activities are provided in Annex D.

After Sales/Lease Service (Business Visitors)

Persons entering Canada to perform after-sales/lease services are included in the Business Visitor category. Therefore they do not need a work permit.

“After-Sales Service” can be provided by a business visitor where:

- the service is warrantied in, or connected to, in the original sales contract or extensions thereto; and
- the individual is an installer, a repair or maintenance worker (or supervisor) who possesses specialized knowledge that is essential to a vendor’s service obligations (including computer hardware and/or software).

The “After-Sales Service” category also contemplates entry into Canada for the purpose of providing familiarization, or training services to prospective users or to maintenance
personnel of the Canadian customer post-installation. This also covers intracompany trainers and trainees. The sales contract or purchase order should refer to such familiarization or training.

After-sales service also covers sales, lease agreements, or purchase orders for software upgrades to operate previously sold or leased equipment. Individuals entering Canada to install, configure, or give training on upgraded software are considered business visitors as long as the service requirement is clearly set out in the new contract or purchase order. The fact that the upgraded software will be used to operate older equipment that may no longer be under warranty or under a service agreement is irrelevant.

In short, the following conditions must be present to qualify for After-Sales Service entry:

• Individuals are required to perform installation, repair and/or maintenance services under a sales contract between their vendor employer and a Canadian customer.

• Third party or sub-contracted service is also permitted provided that the necessary requirements under this category are met. Specifically, there must be clear language in the sales agreement between the vendor or manufacturer, and the Canadian customer, that provides for a third party or sub-contractor to perform the installation, maintenance, or repair service. The third party need not be specifically identified in the sales agreement between the vendor and the Canadian customer.

• The commercial or industrial equipment must be purchased from the vendor located outside Canada under a warranty or other service contract that is incidental to the sale of the equipment.

• The warranty or service contract must provide that the vendor will install, maintain, repair and/or service the equipment for the Canadian customer.

• The services that the individual is to provide must require highly specialized knowledge of the product that is the subject of the “After-Sales Service” obligation, and the individual involved must be aptly qualified;

• The services rendered do not include “hands-on” building and construction work.

• Individuals entering Canada have to maintain their position outside Canada.

Service personnel seeking entry into Canada to perform service work on equipment absent a service obligation being identified in the sales agreement, or where the equipment is out of warranty, or where no service contract exists, are not eligible to enter as business visitors and would instead require a work permit.

Training and Public Speaking

In short, rules for trainers are:

• Intra-company trainees or trainers will be permitted to enter as business visitors as long as they continue to be paid abroad and do not cross the line into “working” at the Canadian entity (see Annex D for examples of work).

• Third-party contractors providing training can enter as business visitors, if this was contemplated in the after-sales service provisions of a contract. For instance, a foreign national coming to train Canadians on machinery or software does not require a work permit as long as the contract provides for training.

• Public speakers for conferences, company meetings, or other short-term events (typically less than five days) may also be work permit exempt, if they rent their own space and charge their own admission fees.

• Work permits must be obtained for commercial trainers or speakers contracted from a third party to train Canadian employees. U.S. nationals may benefit from the NAFTA provisions that allow professionals to obtain work permits for pre-arranged training sessions for subject matter within the trainer’s profession (see section on NAFTA Professionals).

Other Types of Work-Permit Exempt Activities

Aside from the regular business entry, after-sales service and intra-company training, the regulations provide for various other types of activities that visitors may do in Canada without the need for a work permit. Examples include:

• diplomats and representatives of international organizations, and their accompanying dependents;

• visiting members of armed forces;

• on-campus work for full-time international students;

• athletes and referees;
• individuals on conference organizing committees;
• news reporters;
• religious workers and clergy;
• students (doing limited work such as on-campus employment and/or with a practicum in the health field);
• emergency workers, including those rendering medical services;
• transportation workers, including aviation inspectors and crew involved in international transportation; and
• certain entertainers, performers, and athletes.

Temporary Foreign Workers (Work Permits)

An assessment of whether a foreign national requires and qualifies for a work permit must be conducted on a case-by-case basis. Factors considered by visa officers include, first and foremost, whether a work permit is required based upon entering the Canadian labour market and/or whether the foreign national is considered to be “working” — this depends on the nature and contractual relationship of the duties undertaken (see Annex D). Once having determined that a work permit is required, the foreign national’s qualifications must be considered, including:

• educational background;
• work experience;
• citizenship; and
• admissibility.

There are two broad types of work permit classifications in Canada, namely those:

• exempt from the Labour Market Opinion (LMO) requirement; and
• requiring a Labour Market Opinion (LMO), which is the default category.

LMOs are adjudicated by Service Canada, part of Human Resources and Social Development Canada (“HRSDC”), the federal government department responsible for overseeing Canada’s labour market. Although Service Canada has become far more efficient and expeditious in its handling of LMOs, applicants should first consider whether they can benefit from LMO exemptions, which reduces the time and complexity of the application process.

Work Permits Exempt from Labour Market Opinions

The general rule is that any work permit exempt foreign national engaging in “work” must obtain a work permit unless there is an available exemption (e.g., business visits). Canada has a number of “LMO-exempt” work permit categories. Each category has specific eligibility requirements that must be satisfied. The most common of the LMO-exempt categories for business purposes follow.

A) NAFTA Professionals

A NAFTA Professional is an individual who:

• is an American or Mexican citizen;
• is qualified to work in one of the more than 60 professions listed in Annex F (appropriate education and work or educational experience); and
• has a pre-arranged employment or service contract with a Canadian enterprise in an occupation that matches the qualification.

What evidence is required?

• citizenship;
• proof of educational documentation (if required) or other professional qualifications; and
• contract or job offer.

How long does it last?

NAFTA Professional work permits are issued for up to three years but may be extended multiple times in many occupations. Extensions and time allotted always depend on the type of work involved in Canada. Certain categories — often involving unregulated professions — are more highly scrutinized (e.g. Management Consultants, Scientific Technicians, Computer Systems Analysts).
B) Intra-Company Transfers (NAFTA)

Intra-company transfers are individuals who:

- are U.S. or Mexican citizens;
- are seeking employment in an executive or managerial capacity or one involving “specialized knowledge”;
- are entering Canada to work for an enterprise which has a parent, branch, subsidiary or affiliate relationship with the U.S. or Mexican enterprise; and
- have worked continuously for at least one year in the preceding three years in a similar position for the same or affiliated employer as a manager, executive or in a specialized knowledge position.

Multinational companies seeking to assign foreign employees to Canadian positions often use the LMO-exempt intra-company transferee category. There are a number of affiliate relationships that qualify under this category, but all generally rely on common ownership and/or control (e.g., parent-subsidiary, affiliated corporations, branch or representative offices).

Executive and managerial-level staff must generally manage other employees. Management of crucial company functions or processes may qualify. Advanced and unique experience in a specialized knowledge capacity requires proof that the employee holds knowledge of the organization’s products, services, research, equipment and techniques which is so specialized that it is not ordinarily held by others within the sector or industry. The applicant must be coming directly from a similar position at an affiliate outside Canada, which he/she has occupied for at least one continuous year in the past three years. The Canadian position must meet prevailing wage as this is a concept that is applied to assist in determining the existence of specialized knowledge.

What documents are required?

- proof of American or Mexican citizenship;
- confirmation that the individual has been employed continuously, and in a similar position, by the enterprise outside of Canada for one year within the three years preceding the application;
- current position job description;
- where specialized knowledge is required, evidence of such specialized knowledge;
- organizational charts, of management or Executive position;
- job description for the position in Canada;
- intended duration of stay; and
- description of the relationship between the Canadian and American or Mexican enterprises.

How long does it last?

These work permits are initially valid for assignments of up to three years, and extendable in two-year increments. Executive and managerial-level employees can obtain intracompany status for a total of seven years, whereas specialized knowledge employees are limited to five years.

C) Traders and Investors

Trader and investors are individuals seeking to carry out substantial trade in goods or services, mainly between Canada and the US, or conduct substantial investment activities in Canada, in a supervisory or an executive capacity, or in a capacity that involves essential skills.

A trader is someone who:

- is an American or Mexican citizen;
- works for an American or Mexican company;
- is engaged in activities that involve substantial trade in goods and services, that is principally conducted between Canada and the U.S.; and
- is in a supervisory or executive position, or a position that involves essential skills.

A NAFTA investor is someone who:

- is an American citizen;
- works for an American company;
• is engaged in activities that involve a substantial investment having been made or actively being made;

• is seeking entry only to develop and direct the company in Canada; and

• is in a supervisory or executive position, or a position that involves essential skills, if the applicant is an employee.

How long does it last?

The initial work permit for NAFTA traders and Treaty investors will last a maximum of one year. Extensions can be granted for a duration of two years as long as the applicant continues to fulfill the requirements.

D) International Agreements

Many international agreements other than the NAFTA allow international assignees depending on their nationality, to obtain a work permit without an LMO. These agreements include:

• Artists Residencies;

• Film Co-Productions;

• Air Transport; and

• International Experience Canada (IEC-see below).

The most commonly utilized international agreements for international employment transfers are still NAFTA (by far), as well as other agreements used from time to time, the mobility sections of these include Canada’s ever-growing list of trade agreements such as those with Chile, Peru and Colombia. The General Agreement for Trade in Services (GATS) applies to a far broader set of countries – namely to all of the nearly 200 member nations of the World Trade Organization. The GATS allows certain professionals and skilled workers to come to work in Canada for periods of up to three months in a one-year period. Canada has also commenced new multilateral trade agreement negotiations that would expand the mobility options for foreign nationals far more than those available under GATS.

E) Reciprocal Employment

This category can be used for international exchanges, both in public and private sector contexts. The purpose of this LMO exemption is to provide complementary opportunities for international work experience and cultural interchange. Reciprocal employment includes well-known student IEC work-abroad programs such as SWAP and AIESEC, which are negotiated on a reciprocal basis with other nations by Canada’s Department of Foreign Affairs and International Trade.

Companies can also use this exemption category if they create equivalent opportunities for Canadians abroad. For companies to benefit from this category, a formal exchange or employee transfer program, or a minimum number of positions for Canadians sent abroad, should be provided in the application package. Entry under this exemption category must result in a neutral labour market impact. Note that parity in reciprocity does not need to be demonstrated for academic exchanges.

F) Provincial Immigration

Provincial Nominee Programs (PNPs) are run by each province and territory, and result in a nomination for Permanent Residence in Canada, or in the case of Quebec, a Selection Certificate (CSQ). One side benefit of acceptance in provincial employer-based categories, including Quebec’s, is the ability to receive an LMO-exempt work permit, which may be obtained at any Port of Entry (“POE”) for U.S. and visa-exempt nationals.

Open Work Permits for PR Applicants

In December 2012, CIC issued a new policy allowing foreign nationals that are currently residing in Canada, and who have applied for permanent residence under most Canadian economic immigration programs, to be considered for open work permits until their application for permanent residence (PR) is approved, if they meet certain conditions.

To benefit from the new CIC Policy, eligible applicants must:

• Be in Canada at the time they apply for the open work permit;

• Have a valid work permit that expires within 4 months from the time of application;

• Receive a positive eligibility decision under one of the four specified Economic Class PR Programs: the Federal Skilled Worker Program, the Canadian Experience Class, the PNP Class, and the Federal Skilled Trades Program;

• Apply for an open work permit within 4 months from the expiry of their current work permit.

Eligible applicants, if approved, will have their work permits processed and issued for a period of one year, unless complex or contentious issues arise, such as criminal,
security or medical concerns, in which case possible delays or an outright denial of the application may follow. Applicants seeing a bridging open work permit under the PNP Class will only be permitted to work in their nominating province. Further, certain restrictions will apply to eligible permanent residence applicants who have not undergone medical examination in relation to their PR applications.

G) International Student Work Permits

There are many opportunities for foreign students to work while studying, and to obtain LMO-exempt work permits after graduation. During the academic year, these students are eligible for both on and off-campus work. For off-campus work, they must demonstrate a strong academic standing.

Once studies have concluded, students who have graduated from recognized post-secondary institutions in most full-time degree/diploma-granting programs will automatically qualify for an open work permit ranging from eight months to three years, depending on the length of their studies.

Furthermore, HRSDC subsequently relaxes post-graduation work permit extensions requiring an LMO, by eliminating the need for both (i) recruiting, and (ii) the need to pay the prevailing wage (although all employment standards legislation including minimum wage must still be met).

H) Accompanying Family Members

Spousal Work Permits

Spouses of foreign workers (in the National Occupational Classification or NOC, O, A, or B job classifications of six months or more), are eligible to obtain work permits in Canada. These spouses, including common law and same-sex spouses, upon payment of fees receive open work permits, meaning that they can work in any occupation with any employer (including self-employment), subject to the medical examination rules (see Annex B). These rules are broader than in the U.S where only recognized spouses of L1-A (intracompany) and E (traders and investors) can apply for authorization to work.

Dependent Children Pilot Program

Alberta and Ontario currently have a program extended until September 2013, whereby dependent children of foreign workers will be able to obtain open work permits for one year from the date of issue, or for the duration of the parent/guardian’s work permit. Children are eligible as long as one parent has an employer-specific work permit for at least six months in one of the two participating provinces, and works in a skilled, managerial or professional job (A, 0 or B on the National Occupation Classification). Children must be of legal working age (at least 14 years of age in Ontario, and between 18 and 22 years old in Alberta).

I) Other Types of Common LMO-Exempt Work Permits

Several other LMO-exempt categories are available, and include:

- “Significant Economic Benefit” work permits when LMOs are “impracticable,” or have been applied for, but an interim “bridging period” is required;
- entrepreneur/self-employed work permits requested as an adjunct to a permanent residency application under those categories; and
- research, educational or training programs, including post-doctoral fellows and award recipients.
- These categories are useful alternatives when other LMO exemptions are not available.

Work Permit Documentary Requirements

Work Permit applications should generally include the following documentation:

- government Application Forms;
- copy of passport data page;
- company support letter;
- documentary information describing the employer;
- copy of detailed résumé;
- copies of educational degrees/certificates;
- passport size photographs (if applying at visa office); and
- fees.

Note that documentary requirements change depending on the application venue and the type of work permit category.
How to extend your work permit

All temporary foreign workers must ensure they remain in valid status while in Canada. Generally, extension applications should be submitted at least 90 days before expiry, due to unpredictable processing times (which should be checked on the CIC website). Online applications may be quicker. As long as CIC receives the extension application before the work permit expires and is for a continuation of the previous position, the foreign worker may continue to work under “implied” status. This is one of a few circumstances in which a foreign national can work without having a valid physical work permit in hand. Applicants should avoid leaving Canada while on implied status: while CBSA may permit re-entry and extend visitor status, implied working status is lost upon re-entry to Canada.

Labour Market Opinions (LMOs)

If an LMO exemption category is not available, the foreign national must apply for an LMO-based work permit which has a two-step process.

1. Employer submits a “Temporary Foreign Worker Application” to Service Canada; and

2. upon LMO approval, apply for a work permit to a visa office and/or a POE.

As the first step, the proposed Canadian employer must submit a “Temporary Foreign Worker Application” to HRSDC’s local Service Canada Centre. Every province has a centralized Service Canada office. LMO applications are adjudicated regionally because the impact on the labour market is assessed in the particular market where the position is located.

An LMO application can be made with respect to a single job offer or multiple job offers (a “bulk” LMO). The HRSDC officer assesses any LMO application against six factors, ensuring that the offer is genuine and will have either a neutral or positive effect on the Canadian labour market. The factors look at whether the employment of the foreign national is likely to result in:

1. direct job creation or job retention for Canadian citizens or permanent residents;

2. creation or transfer of skills and knowledge for the benefit of Canadians;

3. filling a labour shortage;

4. post-recruitment hiring and training of Canadians;

5. undercutting the prevailing wage rate and working conditions for the occupation; and

6. undermining the settlement or employment of persons involved in a labour dispute.

Recruiting and Prevailing Wage

While any of these six factors can be determinative, recruitment is arguably the most important factor in determining “whether the employer has made, or agreed to make, reasonable efforts to hire or train Canadian citizens or permanent residents”. HRSDC mandates national advertising in most cases. At the provincial level, British Columbia and Quebec have created their own LMO-exempt occupation lists (see Annex F).

Today, three skill level classifications carry different recruitment and advertising obligations:

1. Management and professional level occupations in the National Occupational Classification (“NOC”) O and A classifications (such as CFOs, engineers and accountants) require advertising on HRSDC’s web-based National Job Bank for a minimum of two weeks, or similar recruitment activities that meet the industry norm.

2. High skilled NOC B professions and trades (such as secretaries, bookkeepers, or machinists) require two weeks of National Job Bank advertising; and

3. NOC C and D low and semi-skilled occupations (such as truck drivers, general labourers, or retail clerks) require National Job Bank placement, in addition to advertising on a secondary internet site, newspaper or prominent community posting, along with demonstrating ongoing efforts to recruit from disadvantaged groups.

All advertising listed above must be completed during the three months prior to the LMO application. Wages must be disclosed in all advertisements, except for those relating to group A.

What are the required documents?

The following documents are typically required for an LMO application:
• LMO application form (ensure it is a current form);

• cover letter from the employer (the most crucial part of the application);

• documents describing company (including passport data page, resume, degree/diploma);

• job description;

• copies of advertising efforts and description of recruitment;

• summary of the results of the recruitment;

• Certificate of Acceptance (“CAQ”) form and fees (if the job is in Quebec – applications in the rest of Canada only require fees at the work permit stage);

• documents describing the applicant (optional but may be useful);

Accelerated Labour Market Opinions (A-LMOs)

Effective April 25, 2012, Human Resources and Skills Development Canada (HRSDC)/Service Canada implemented a new A-LMO Initiative, in an effort to respond to the needs of eligible employers for timely LMO processing. The purpose of the A-LMO Initiative is to introduce efficiency measures by reducing the amount of paper-burden on employers in the application process, and by introducing attestations for specific assessment criteria. An A-LMO application does not exempt employers from criteria assessed in the regular LMO process. HRSDC/Service Canada will continue to provide an A-LMO based on:

• the genuineness of the job offer;

• the wage offered; and

• whether the job offer is likely to fill a labour shortage.

If the employer meets all the eligibility criteria to participate in the A-LMO Initiative, HRSDC/Service Canada will then verify if the employer has agreed to all of the attestations and issue a positive A-LMO.

To be eligible, an employer must meet the following criteria:

• have at least one LMO approved within two years anywhere in Canada;

• have a clean compliance record with the Foreign Worker Program;

• not be subject of investigation, infraction, serious complaint, or unresolved violation under provincial law; and consent to participate in a subsequent audit process.

Features of the A-LMO:

• 10 day-processing in certain provinces;

• employers must complete and retain record of recruitment efforts (including advertising);

• limited to managerial/high skill (NOC O, A and B)

• post-audit compliance.

Note: The Initiative is currently not implemented in the province of Quebec.

What are the required documents to apply for an A-LMO?

The following documents are typically required for an A-LMO application:

• If applying by fax or mail, employers must complete, sign and submit only the A-LMO application form to the Service Canada Centre responsible for processing LMOs in their area (ensure it is a current form);

• If applying online, the TFW Web Service has been adapted to offer Web Service users access to the online A-LMO application process. The registration forms for the Web Service will include an option which allows users to be considered for the A-LMO Initiative. Once the registration is completed and mailed or faxed to the appropriate Service Canada Centre, it will be reviewed to determine if the employer’s organization is eligible for access to both the Web Service and the online A-LMO process.

In each case above, the employer is required to maintain records of all supporting documentation, including the following:

• job descriptions;
After Labour Market Opinion Approval

Once the LMO or A-LMO is approved, the local HRSDC office will issue an opinion to the employer. Where the foreign national will be working in Quebec, a Quebec Acceptance Certificate (CAQ) must also be obtained. Generally, U.S. citizens would apply for a work permit at a port of entry. If applying abroad, including for aliens resident in the U.S. from visa-required countries (see Annex A), the applicant will receive a visa counterfoil, along with a work permit confirmation letter, from the appropriate Canadian visa office, which is then used to obtain a work permit at the port of entry.

Compliance of LMO Requirements

Canada increased the monitoring of foreign workers and related compliance work with legislative changes introduced in April, 2011. Since that time, we have seen a marked increase in temporary foreign worker audits by Service Canada, and heightened scrutiny by CIC and CBSA, the two other primary immigration departments.

Genuineness of the Job Offer

First, visa officers, before approving a work permit, must ensure that the job offer is genuine. An officer can evaluate the genuineness of an offer by various due diligence measures, including ensuring that the offer is made by an employer that is actively engaged in the business where the offer is made. To assess whether the offer is consistent with the reasonable employment needs of the employer, he may request a T4 Summary, T2 schedule, T2125, Workers’ Compensation clearance letter and, or business contracts. A refusal to submit such information, if requested, may result in a refusal to issue the work permit. The genuineness assessment also considers past compliance with the law. The employer must have been in compliance with the federal and/or provincial laws that regulate employment, or the recruiting of employees, in the province where the foreign national will work.

The “Substantially the Same” (STS) Test

The new Regulations allow the government to examine the last two years of the employer’s record with regard to its foreign workers. In doing so, the government will check that the employer provided each foreign worker with the wages, working conditions and occupation that was substantially the same as those set out in the employer’s original application. Deviations from this STS test can be excused if justified: justifications include changes in economic conditions, requirements of a collective agreement or administrative errors.

A negative STS assessment will result where changes to the wage, working conditions or occupation are considered detrimental to the foreign national. On the other hand, minor improvements in wages or working conditions should not result in a negative STS assessment. It is nonetheless recommended that any change in the employment be brought to the attention of the government.

Penalties

Penalties range from employer exclusion from using the Temporary Foreign Worker Program for a two year period, to publication on the CIC website and an inability of any foreign worker to work at the entity, to fines and jail terms and potential inability of any employee involved in violations to obtain a Work Permit.

4-Year Cap

The government, also in April 2011, imposed a four year limit on the length of time certain foreign workers can remain working in Canada in any eight year period. Exceptions to this rule include those:

- in managerial (NOC 0) or professional (NOC A) occupations;
- employed in Canada under an international agreement, such as NAFTA;
- exempt from LMOs, including intra-company transferees, post-graduate work permit holders, post doctoral fellows, “significant benefit” workers, provincial nominees and spouses of all of these workers;
- applying for Canadian Permanent Residence and have received a/an:
  - “Certificat de sélection du Québec” (CSQ) if applying as a Quebec Skilled Worker;
  - Provincial Nominee (PN) certificate if applying under a...
province’s Provincial Nominee Program;

- approval in principle letter if applying as a Live-in Caregiver;

- positive selection decision if applying as a Federal Skilled Worker; or

- positive selection decision if applying as a Canadian Experience Class applicant.

An immigration officer, when calculating the number of years a foreign national has already worked in Canada, will assume that the foreign national worked for the length of time indicated in the previous work permit(s). All work performed in Canada while on implied status will count towards the 4-year cap. Work performed by a student permit holder will not count towards the 4-year cap. Legitimate breaks in employment including extended sick-leave, maternity leave and extended absences from Canada, will not be counted against the 4-year cap. This includes time spent outside Canada by those who split their work or residence between Canada and the United States. Employees are advised to keep records of all absences from work and the reason for those absences. Examples of such documentary evidence include letters from doctors, employers, schools, proof of maternal/parental benefits from government agencies and Record of Employment documentation.

Compliance of A-LMO Requirements

To demonstrate compliance through a review, employers may be required to submit the following documents:

- payroll information for the Temporary Foreign Worker (TFW) and potentially for Canadian citizens and permanent residents;

- collective bargaining agreements;

- time sheets;

- job descriptions;

- copies of recruitment advertising;

- proof of no labour dispute;

- copies of the TFW’s work permit; and

- proof of registration with provincial/territorial workplace safety, where applicable.

Employers should retain all documents related to their A-LMO application and attestation, as well as any documents related to other positive LMOs, for up to 6 years. Failure to provide the documentation when requested will result in the employers’ ineligibility to participate in the A-LMO Initiative.

Non-compliant employers

When non-compliance is determined, employers will have an opportunity to provide justification as well as to take corrective action, where applicable. HRSDC/Service Canada will work with the employer to implement the appropriate corrective action and may request proof to this effect in order for the employer to be deemed compliant.

Employers found non-compliant with the A-LMO Initiative, will be subject to consequences which will include:

- ineligibility to use the A-LMO Initiative;

- possible revocation of other LMOs for which work permits have not been issued yet;

- sharing the compliance review finding with HRSDC/Service Canada federal and provincial partners, for further investigation; and

- greater scrutiny of any pending or subsequent LMO applications.

Audit Strategies

This sub-section is intended mostly for professionals responsible for ensuring their company and employees comply with the rules affecting foreign workers.

Employers should implement an internal audit system which can address the genuineness of employment offers made to all foreign workers. The following 10-step process will ensure that you audit your foreign workers and have no surprises:

1. Adopt a formal Human Resources (HR) compliance program for foreign workers. Create a centralized database to track these workers and appoint a compliance officer to be a point of contact to monitor all Temporary Foreign Workers in Canada;
2. Ensure all authorizations are current, including immigration and social insurance paperwork. Ensure all documentation is up-to-date and properly filed;

3. Ensure HR representatives are in a position to abide by all representations made to the government in Temporary Foreign Workers applications;

4. Audit all foreign workers regularly - preferably every six months, and at a minimum, once annually - including verification of current position and salary, comparing these against immigration documentation;

5. Report all significant or material changes in employment or salary to government, and/or amend status documentation;

6. Apply to immigration for status extensions early;

7. Provide immigration resources for foreign workers, including information about pathways to permanent residence, and rules about leaving the country during implied status or other delicate immigration times;

8. Select a central HR contact for Temporary Foreign Worker questions;

9. Have internal audit processes set out in a cover letter to or from counsel; and

10. Should issues become apparent through an internal or government audit, work with counsel.

Frequently Asked Questions

1. Denied Entry — Does having previously been denied entry into Canada due to improper documentation impede my ability to enter Canada in the future for business or leisure, even if I have all the proper documentation?

   A previous denial is likely to detrimentally impact future applications for entry. It will be important to acknowledge the reasons for the prior denial and explain why admission is now proper. There are no limits to the number of times you can apply and a prior denial does not automatically bar you from all future travel.

2. Criminal Record — Does having a prior criminal conviction ban one from entering Canada to work or conduct business?

   Sometimes. Canadian law prevents entry to individuals convicted of or who admit to committing certain crimes. It is important to have certified copies of court or police records to show the final disposition of any arrest or court charges. U.S. visitors are most often denied access to Canada because of substance-related offences (including DUls and drug offenses), and other crimes which are equivalent to crimes under federal statutes, and which would result in indictable or hybrid convictions in Canada. There are however a few exceptions. If the visitor has only committed one crime, it was committed when the visitor was under 18 years of age and the crime was committed more than five years before the date of application for admission to Canada, the visitor can be admitted. The visitor will also be allowed entry where only one crime was committed by the visitor and the maximum penalty possible for the crime committed does not exceed one year of imprisonment, and the visitor was not sentenced to imprisonment for a term greater than 6 months.

3. Expired Warranty — We are sometimes called by Canadian customers to service equipment no longer under warranty. How can we legally help our client despite the equipment no longer being covered by our original after-sales contract?

   Business visitor status will not authorize travel to the U.S. for after sales services under an expired warranty, but may be permitted if you present documentation that the warranty was extended and is still in effect.

4. U.S. Subsidiary of Canadian Corporation — We are the U.S. subsidiary of a Canadian-based corporation providing consulting and professional services. Our U.S. staff and U.S.-paid staff sometimes travel to Canada to attend meetings with our U.S. clients, usually at our clients’ Canadian office. This always creates confusion and uncertainty for Canadian immigration officials, which leads to our staff usually being questioned and delayed when crossing the border. How can we prevent this situation from occurring?
The employees should carry a letter from the U.S. employer that introduces the company and explains the limited purpose of their trip. For short business trips to attend meetings, negotiate contracts, visit trade shows, etc., this is usually sufficient. If the U.S. employees spend extensive periods of time in Canada, this increases concerns that they may be engaging in productive work. Work permits (e.g. under NAFTA) can be used even for staff who only intermittently work in Canada, but otherwise carry out their regular duties in the United States.

5. Permanent Resident — Are the procedures outlined in this guide any different for permanent residents that do not hold U.S. citizenship?

Yes, the procedures are different for U.S. citizens and U.S. permanent residents. Permanent residents can still qualify for entry to Canada, but will have to do so under our general Canadian immigration provisions. U.S. citizens enjoy the additional benefits under NAFTA described in this guide.

6. What is the normal entry period provided to U.S. citizens for business visits, and how easy is it to extend business visits from within Canada?

The normal entry period will depend on the type of authorization under which you are entering Canada. Refer to the section which applies to you to learn more about the allowed time periods and the possibilities for extension. The procedure to extend is usually similar to the procedure to acquire the status initially, with equivalent supporting documentation, fees, etc. Timelines and forms, however, may differ.

7. What are the consequences of doing some tasks not identified as part of business activities?

Performing work that is outside the scope of your business entry could put you and your employer at risk. An employer may find it difficult to sponsor new work permit requests and may be subject to other penalties if caught. You could be ordered to depart Canada and future visas and/or entry could be jeopardized.

8. Is there any equivalent of the U.S. I-9 card or program (employee verification) in Canada?

No, there is no obligation to keep or report in a manner similar to the I-9 card program. However, employers are required under the law to verify that employees are permitted to work in Canada (both under immigration and social insurance regulations) and any representations or “sponsorship” documentation provided on behalf of employees should be retained for no less than six years.

9. At what point are there tax consequences for Americans visiting or working in Canada as individuals, and at what point should employers be concerned about Canadian tax consequences?

Compensation for employment in Canada is subject to Canadian federal and provincial payroll and income taxes regardless of the amount or number of days spent in Canada. Further, taxes on income earned anywhere in the world may be imposed by Canada, if the visitor is present for an aggregate of more than 183 days due to various deemed residency rules under the Income Tax Act. Please note that there are exceptions to the 183-day period so professional tax advice should always be sought. There is a treaty in effect between Canada and the U.S. to avoid double taxation in Canada of income taxed by U.S. Payroll tax withholding for employers is generally based on the location where the employee works to earn the money. A U.S. employer with an employee working in Canada can unwittingly subject itself to Canadian payroll tax, and even corporate income tax obligations without careful planning.

10. When does it become an issue to bring over tools and equipment to perform the duties required?

If you have the proper entry authorizations for the work that requires those tools, there should not be a problem for bringing tools and equipment to perform the duties required, unless there are specific laws relating to customs. It would however be helpful to have a letter from the employer specifying the need for such materials.
Annex A — Visa Exempt Nationals

<table>
<thead>
<tr>
<th>Visa Exempt Nationals</th>
</tr>
</thead>
<tbody>
<tr>
<td>A Temporary Resident Visa (TRV) will not be required if the foreign national is a citizen of one of the following countries:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Andorra</th>
<th>Cyprus</th>
<th>Ireland</th>
<th>Monaco</th>
<th>St. Vincent</th>
<th>United Kingdom and territories*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antigua &amp; Barbuda</td>
<td>Denmark</td>
<td>Israel (National Passport holders)</td>
<td>Namibia</td>
<td>San Marino</td>
<td>United States (including Green Card holders)</td>
</tr>
<tr>
<td>Australia</td>
<td>Estonia</td>
<td>Italy</td>
<td>Netherlands</td>
<td>Singapore</td>
<td>Western Samoa</td>
</tr>
<tr>
<td>Austria</td>
<td>Finland</td>
<td>Japan</td>
<td>New Zealand</td>
<td>Slovakia</td>
<td>Vatican/Holy See</td>
</tr>
<tr>
<td>Bahamas</td>
<td>France</td>
<td>Korea (Republic of)</td>
<td>Norway</td>
<td>Solomon Islands</td>
<td>Taiwan (ordinary passport with Personal Identification Number)</td>
</tr>
<tr>
<td>Barbados</td>
<td>Germany</td>
<td>Latvia</td>
<td>Papua New Guinea</td>
<td>Spain</td>
<td>British Overseas Citizens who are re-admissible to the United Kingdom *</td>
</tr>
<tr>
<td>Belgium</td>
<td>Greece</td>
<td>Lithuania</td>
<td>Poland</td>
<td>Swaziland</td>
<td></td>
</tr>
<tr>
<td>Botswana</td>
<td>Hong Kong (S.A.R. passports)</td>
<td>Liechtenstein</td>
<td>Portugal</td>
<td>Sweden</td>
<td></td>
</tr>
<tr>
<td>Brunei</td>
<td>Hungary</td>
<td>Luxembourg</td>
<td>St. Kitts &amp; Nevis</td>
<td>Slovenia</td>
<td></td>
</tr>
<tr>
<td>Croatia</td>
<td>Iceland</td>
<td>Malta</td>
<td>St. Lucia</td>
<td>Switzerland</td>
<td></td>
</tr>
</tbody>
</table>

* Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, St. Helena, Turks and Caicos Islands and formerly Hong Kong

Annex B — Occupations Subject to Medical Examinations Rules

<table>
<thead>
<tr>
<th>Occupations Subject to Medical Examinations Rules</th>
</tr>
</thead>
<tbody>
<tr>
<td>• workers in the health sciences field;</td>
</tr>
<tr>
<td>• clinical laboratory workers;</td>
</tr>
<tr>
<td>• patient attendants in nursing and geriatric homes;</td>
</tr>
<tr>
<td>• medical students admitted to Canada to attend university;</td>
</tr>
<tr>
<td>• medical electives and physicians on short-term locums;</td>
</tr>
<tr>
<td>• teachers of primary or secondary schools or other teachers of small children;</td>
</tr>
<tr>
<td>• domestics;</td>
</tr>
<tr>
<td>• workers who give in-home care to children, the elderly and the disabled;</td>
</tr>
<tr>
<td>• day nursery employees; and</td>
</tr>
<tr>
<td>• agricultural workers from designated countries or territories</td>
</tr>
</tbody>
</table>
### Annex C — Medically Exempt Countries

**Medically Exempt Countries**

You do not need a visa in most cases if coming to Canada for less than 6 months, or if longer, you're from:

<table>
<thead>
<tr>
<th>Country</th>
<th>Country</th>
<th>Country</th>
<th>Country</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>Estonia</td>
<td>Italy</td>
<td>Montserrat</td>
<td>Switzerland</td>
</tr>
<tr>
<td>American Samoa</td>
<td>Egypt</td>
<td>Jamaica</td>
<td>Netherlands</td>
<td>Tonga</td>
</tr>
<tr>
<td>Australia</td>
<td>Fiji</td>
<td>Japan</td>
<td>New Zealand</td>
<td>Tunisia</td>
</tr>
<tr>
<td>Austria</td>
<td>Finland</td>
<td>Jordan</td>
<td>Norway</td>
<td>Turkey islands*</td>
</tr>
<tr>
<td>Belgium</td>
<td>France*</td>
<td>Kuwait</td>
<td>Oman</td>
<td>U.A.E.</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>Germany</td>
<td>Lebanon</td>
<td>Poland</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>Chile</td>
<td>Greece</td>
<td>Liechtenstein</td>
<td>Serbia</td>
<td>United States</td>
</tr>
<tr>
<td>Costa Rica</td>
<td>Guyana (French)</td>
<td>Luxembourg</td>
<td>Singapore</td>
<td>Uruguay</td>
</tr>
<tr>
<td>Cuba</td>
<td>Hungary</td>
<td>Macedonia</td>
<td>Slovakia</td>
<td>Western Samoa</td>
</tr>
<tr>
<td>Cyprus</td>
<td>Iceland</td>
<td>Malta</td>
<td>Slovenia</td>
<td>Vatican City State</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>Iran</td>
<td>Mexico</td>
<td>Spain</td>
<td>Caribbean islands**</td>
</tr>
<tr>
<td>Croatia</td>
<td>Ireland</td>
<td>Monaco</td>
<td>Sweden</td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td>Israel</td>
<td>Montenegro</td>
<td>Syria</td>
<td></td>
</tr>
</tbody>
</table>

* Includes St. Pierre et Miquelon.
**Includes Anguilla, Antigua & Barbuda, Barbados, Bermuda, British Virgin, Cayman, Cocos, Cook, Dominica, Grenada, Guadeloupe, Martinique, Netherlands Antilles, Puerto Rico, St. Vincent and the Grenadines, St. Barthelemy, St. Kitts & Nevis, St. Lucia, St. Martin, St. Vincent and the Grenadines, Trinidad and Tobago, Turks and Caicos, U.S. Virgin.

### Annex D — Samples of Business and Work Activities

<table>
<thead>
<tr>
<th>Samples of business activities</th>
<th>Samples of work activities</th>
</tr>
</thead>
<tbody>
<tr>
<td>attended short business or board meetings, conferences, seminars, conventions or trade shows;</td>
<td>managing people, projects or other functions;</td>
</tr>
<tr>
<td>purchasing Canadian goods or services for a foreign business or government, or receiving training or familiarization in respect of such goods or services;</td>
<td>any hands-on activities that involve duties for which a Canadian would ordinarily be paid;</td>
</tr>
<tr>
<td>receiving or providing training within a Canadian parent or subsidiary of the corporation that employs the individuals outside Canada;</td>
<td>attending project meetings on a project for which a professional's U.S. employer has already been retained and is being paid (whether in the domain of IT, architecture, engineering, consulting, or otherwise);</td>
</tr>
<tr>
<td>representing a foreign business or government for the purpose of selling goods for that business or government, if the foreign national is not engaged in making sales to the general public in Canada; and</td>
<td>supervising construction, installations or other project implementation, not falling under “After-sales service;” and</td>
</tr>
<tr>
<td>most work pursuant to a sale of goods or software, included in a warranty.</td>
<td>almost any activity involving trades, mechanics, technicians, or related occupations, unless exempted under the After-Sales Service category.</td>
</tr>
</tbody>
</table>
## Annex E — NAFTA Professionals

<table>
<thead>
<tr>
<th>Profession</th>
<th>Minimum Education Requirements and Alternative Credentials</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accountant</td>
<td>Baccalaureate or Licenciatura Degree; or C.P.A., C.A., C.G.A. or C.M.A.</td>
</tr>
<tr>
<td>Architect</td>
<td>Baccalaureate or Licenciatura Degree; or state/provincial license</td>
</tr>
<tr>
<td>Computer Systems Analyst</td>
<td>Baccalaureate or Licenciatura Degree; or PostSecondary Diploma or PostSecondary Certificate, and three years experience</td>
</tr>
<tr>
<td>Disaster Relief Insurance Claims Adjuster (claims Adjuster employed by an insurance company located in the territory of a Party, or an independent claims adjuster)</td>
<td>Baccalaureate or Licenciatura Degree, and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims; or three years experience in claims adjustment and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims.</td>
</tr>
<tr>
<td>Economist</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Engineer</td>
<td>Baccalaureate or Licenciatura Degree; or state/provincial license</td>
</tr>
<tr>
<td>Forester</td>
<td>Baccalaureate or Licenciatura Degree; or state/provincial license</td>
</tr>
<tr>
<td>Graphic Designer</td>
<td>Baccalaureate or Licenciatura Degree; or PostSecondary Diploma or PostSecondary Certificate, and three years experience</td>
</tr>
<tr>
<td>Hotel Manager</td>
<td>Baccalaureate or Licenciatura Degree in hotel/restaurant management; or PostSecondary Diploma or PostSecondary Certificate in hotel/restaurant management, and three years experience in hotel/restaurant management</td>
</tr>
<tr>
<td>Industrial Designer</td>
<td>Baccalaureate or Licenciatura Degree; or PostSecondary Diploma or PostSecondary Certificate, and three years experience</td>
</tr>
<tr>
<td>Interior Designer</td>
<td>Baccalaureate or Licenciatura Degree; or PostSecondary Diploma or PostSecondary Certificate, and three years experience</td>
</tr>
<tr>
<td>Land Surveyor</td>
<td>Baccalaureate or Licenciatura Degree; or state/provincial/federal license</td>
</tr>
<tr>
<td>Landscape Architect</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Lawyer (including Notary in the Province of Quebec)</td>
<td>LL.B., J.D., L.L.L., B.C.L. or Licenciatura Degree (five years); or membership in a state/provincial bar</td>
</tr>
<tr>
<td>Librarian</td>
<td>M.L.S. or B.L.S. (for which another Baccalaureate or Licenciatura Degree was a prerequisite)</td>
</tr>
<tr>
<td>Management Consultant</td>
<td>Baccalaureate or Licenciatura Degree; or equivalent professional experience as established by statement or professional credential attesting to five years experience as a management consultant, or five years experience in a field of specialty related to the consulting agreement</td>
</tr>
<tr>
<td>Mathematician (including Statistician)</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Range Manager/Range Conservationalist</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Research Assistant (working in a post-secondary educational institution)</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Scientific Technician/Technologist</td>
<td>Possession of (a) theoretical knowledge of any of the following disciplines: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics; and (b) the ability to solve practical problems in any of those disciplines, or the ability to apply principles of any of those disciplines to basic or applied research</td>
</tr>
</tbody>
</table>
Annex E — NAFTA Professionals (continued)

<table>
<thead>
<tr>
<th>Profession</th>
<th>Minimum Education Requirements and Alternative Credentials</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social Worker</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Sylviculturist (including Forestry Specialist)</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Technical Publications Writer</td>
<td>Baccalaureate or Licenciatura Degree; or PostSecondary Diploma or PostSecondary Certificate, and three years experience</td>
</tr>
<tr>
<td>Urban Planner (including Geographer)</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Vocational Counsellor</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
</tbody>
</table>

**Medical/Allied Professional**

<table>
<thead>
<tr>
<th>Profession</th>
<th>Minimum Education Requirements and Alternative Credentials</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dentist</td>
<td>D.D.S., D.M.D., Doctor en Odontologia or Doctor en Cirugia Dental; or state/provincial license</td>
</tr>
<tr>
<td>Dietitian</td>
<td>Baccalaureate or Licenciatura Degree; or state/provincial license</td>
</tr>
<tr>
<td>Medical Laboratory Technologist (Canada)/Medical Technologist (Mexico and the United States)</td>
<td>Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience</td>
</tr>
<tr>
<td>Nutritionist</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Occupational Therapist</td>
<td>Baccalaureate or Licenciatura Degree; or state/provincial license</td>
</tr>
<tr>
<td>Pharmacist</td>
<td>Baccalaureate or Licenciatura Degree; or state/provincial license</td>
</tr>
<tr>
<td>Physician (teaching or research only)</td>
<td>M.D. or Doctor en Medicina; or state/provincial license</td>
</tr>
<tr>
<td>Physiotherapist/Physical Therapist</td>
<td>Baccalaureate or Licenciatura Degree; or state/provincial license</td>
</tr>
<tr>
<td>Psychologist</td>
<td>State/provincial license; or Licenciatura Degree</td>
</tr>
<tr>
<td>Recreational Therapist</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Registered Nurse</td>
<td>State/provincial license; or Licenciatura Degree</td>
</tr>
<tr>
<td>Veterinarian</td>
<td>D.V.M., D.M.V. or Doctor en Veterinaria; or state/provincial license</td>
</tr>
</tbody>
</table>

**Scientist**

<table>
<thead>
<tr>
<th>Profession</th>
<th>Minimum Education Requirements and Alternative Credentials</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculturist (including Agronomist)</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Animal Breeder</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Animal Scientist</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Apiculturist</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Astronomer</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Biochemist</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Biologist</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Chemist</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Dairy Scientist</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
</tbody>
</table>
## Annex E — NAFTA Professionals (continued)

<table>
<thead>
<tr>
<th>Profession</th>
<th>Minimum Education Requirements and Alternative Credentials</th>
</tr>
</thead>
<tbody>
<tr>
<td>Entomologist</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Epidemiologist</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Geneticist</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Geologist</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Geochemist</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Geophysicist (including Oceanographer in Mexico and the United States)</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Horticulturist</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Meteorologist</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Pharmacologist</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Physicist (including Oceanographer in Canada)</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Plant Breeder</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Poultry Scientist</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Soil Scientist</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Zoologist</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td><strong>Teacher</strong></td>
<td></td>
</tr>
<tr>
<td>College</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>Seminary</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
<tr>
<td>University</td>
<td>Baccalaureate or Licenciatura Degree</td>
</tr>
</tbody>
</table>

1. A business person seeking temporary entry under this Appendix may also perform training functions relating to the profession, including conducting seminars.
2. “State/provincial license” and “state/provincial/federal license” mean any document issued by a state, provincial or federal government, as the case may be, or under its authority, but not by a local government, that permits a person to engage in a regulated activity or profession.
3. “Post-Secondary Diploma” means a credential issued, on completion of two or more years of postsecondary education, by an accredited academic institution in Canada or the United States.
4. “Post-Secondary Certificate” means a certificate issued, on completion of two or more years of postsecondary education at an academic institution, by the federal government of Mexico or a state government in Mexico, an academic institution recognized by the federal government or a state government, or an academic institution created by federal or state law.
5. A business person in this category must be seeking temporary entry to work in direct support of professionals in agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics.
6. A business person in this category must be seeking temporary entry to perform in a laboratory chemical, biological, hematological, immunologic, microscopic or bacteriological tests and analyses for diagnosis, treatment or prevention of disease.
Annex F — Advertising Exemptions to LMOs (or “variations from”)

The only officially endorsed exceptions to advertising are where the position:

• entails installation, inspection or repair of equipment, and the warranty requires the work to be done by skilled workers designated by the manufacturer;

• requires a specialist familiar with the overall operation to do the work on a regular basis, with limited duration, with no opportunity for Canadians to be trained;

• is in the entertainment sector and involves a limited number of days in a specific location and on very short notice (e.g. boxers, bar bands and DJ’s, musicians, singers, film directors, or first assistant directors);

• is with an international organization or the mission of a foreign government;

• is for a live-in-caregiver who is already in Canada, in emergency situations, or when the employer of a live-in-caregiver moves their household to a new province/territory and wishes to retain his/her current live-in caregiver;

• is part of the Seasonal Agricultural (farm workers) program;

• is for an owner or operator who is an integral to the day-to-day operation of the business and will be actively involved in business processes or service delivery in Canada;

• is for certain academic occupations; or,

• supports an international student who has graduated from a recognized post-secondary Canadian institution and who holds an open "post-graduate" work permit.

Alberta’s List

• Carpenter (NOC 7271)

• Estimator (NOC 2234)

• Heavy duty equipment mechanic (NOC 7312)

• Ironworker (NOC 7264)

• Millwright and industrial mechanic (NOC 7311)

• Steamfitter and pipefitter (NOC 7252)

• Welder (NOC 7265)

British Columbia’s List

British Columbia has exempted the following occupations from the need for advertising:

• Digital Media Occupations (the advertising variation is limited to Digital Entertainment Software Engineer and Digital Artist positions within the video gaming and digital animation/visual effects industries).

Quebec’s List

Quebec exempts the following occupations from the need for advertising:

• Human Resources Managers

• Sales, Marketing and Advertising Managers

• Retail Trade Managers

• Financial Auditors and Accountants

• Administrative Officers

• Executive Assistants

• Medical Secretaries

• Civil Engineers

• Aerospace Engineers

• Information Systems Analysts and Consultants
ANNEXES

• Software Engineers and Designers
• Computer Programmers and Interactive Media Developers
• Civil Engineering Technologists and Technicians
• Mechanical Engineering Technologists and Technicians
• Electrical and Electronics Engineering Technologists and Technicians
• Drafting Technologists and Technicians
• User Support Technicians
• Systems Testing Technicians
• Specialist Physicians
• General Practitioners and Family Physicians
• Dentists
• Veterinarians
• Pharmacists
• Audiologists and Speech-Language Pathologists
• Physiotherapists
• Occupational Therapists
• Registered Nurses
• Medical Laboratory Technologists and Pathologists' Assistants
• Respiratory Therapists, Clinical Perfusionists and Cardiopulmonary Technologists
• Medical Radiation Technologists
• Dental Hygienists and Dental Therapists
• Licensed Practical Nurses
• College and Other Vocational Instructors
• Secondary School Teachers
• Social Workers
• Community and Social Service Workers
• Translators, Terminologists and Interpreters
• Retail Trade Supervisors
• Technical Sales Specialists – Wholesale Trade
• Machinists and Machining and Tooling Inspectors
• Construction Millwrights and Industrial Mechanics (Except Textile)
• Heavy-Duty Equipment Mechanics
• Automotive Service Technicians, Truck and Bus Mechanics and Mechanical Repairers
• Electrical Mechanics

Ontario

Ontario has also exempted the following occupations from the need for advertising:

• Digital Media Occupations (the advertising variation is limited to Digital Entertainment Software Engineer and Digital Artist positions within the video gaming and digital animation/visual effects industries).
• Software Engineers and Designers (NOC 2173)
• Graphic Designers and Illustrators (NOC 5241)
Additional Links

Embassy of the United States of America in Canada:

U.S. Customs and Border Protection - Business & Work:

U.S. Citizenship and Immigration Services:
http://www.uscis.gov/

U.S. Citizenship and Immigration Services — Working in the United States:
http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=a39e901bf9873210VgnVCM100000082ca60aRCRD&vgnextchannel=a39e901bf9873210VgnVCM100000082ca60aRCRD

Embassy of Canada to the United States of America

Foreign Affairs and International Trade Canada – NAFTA Chapter 16 – Temporary Entry for Business Persons

Citizenship and Immigration Canada – Business People

Foreign Affairs and International Trade Canada — Temporary Entry into the United States under the North American Free Trade Agreement - A Guide for Canadian Businesspersons:

Disclaimer: this publication is intended to provide general information only, does not constitute legal or other advice, and should not be used as a substitute for legal advice from a qualified legal professional in your jurisdiction who has been fully informed of your specific circumstances.
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http://www.bakermckenzie.com/globalmigration/
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