

**US BORDER CROSSINGS:
A *NAFTA* PERSPECTIVE**

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US BORDER CROSSINGS: A *NAFTA* PERSPECTIVE ¹

I. INTRODUCTION

Securing the input of executives, managers, and key foreign personnel can be fundamental to a company's expansion and continued success. In today's business environment, it is critical that companies benefit from the expertise of the most qualified people whether for meetings, consultations, or short-term assignments.

Upon receiving word of a short term personnel need in the U.S., the Human Resources department's task is to handle the logistics of bringing a foreign national to the United States - a task that includes securing the employee's proper immigration status in the U.S. The Human Resources Manager's ability to navigate this area of immigration law in a timely and organized manner is fundamental to the company's ability to fulfil its personnel needs and, ultimately, its corporate objectives.

In most instances, Canadians entering the U.S. as non-immigrants do so with few or no complications. There are times, however, where the reception travellers receive at airport Pre-Flight Inspection or border Ports of Entry is trying and, on occasion, outright hostile. In the past few years Canadian non-immigrants including professionals, high level executives and managers, have reported increasing complications and delay at borders and airports. In the past, many Canadians did not thoroughly consider the type and scope of the activities they intended to carry out in the U.S. Indeed, some Human Resource departments and employees literally assumed that provided the employee remained on the Canadian payroll he or she could enter the United States as a Business Visitor regardless of the intended activity.

The key to smooth entry to the United States from Canada at a Port of Entry or Pre-Flight Inspection is a well thought-out and accurate explanation of the employee's prospective activities accompanied by strong supporting documentation. Presentation is

¹Note: This article is intended to provide general knowledge and information on U.S. and Immigration law as it relates to the *NAFTA*. Readers are advised that they are not to rely exclusively upon the information provided herein in determining their or their employees' rights and obligations but should seek the legal advice based on the facts particular to each case.

particularly key for *NAFTA*-based entries as applications, petitions and visitor entry requests are almost always carried out in person and on the spot.

In the following pages we provide you with the basic information you will need to make and implement short term assignment decisions. We outline the framework for temporary entry to the U.S. from Canada. We place particular emphasis on the simplified and expedited procedures accorded to Canadians pursuant to the *North American Free Trade Agreement* that pertain to Business Visitors, Intracorporate Transfers and Professionals.

II. *NAFTA* TEMPORARY ENTRY TO THE UNITED STATES

The *North American Free Trade Agreement* ("*NAFTA*") came into force in January, 1994 and superseded the *United States - Canada Free Trade Agreement*. The *NAFTA* was designed to liberalize trade relations amongst its signatories; it also facilitates the non-immigrant entry of Canadians (and Mexicans) to the U.S.²

Since the advent of the *NAFTA*, the flow of Canadians entering the U.S. has steadily risen. *NAFTA* entries of Mexican nationals have, in the same period, been merely a trickle. For example, in 1995, of the approximately 48,000 Canadians that were admitted to the U.S. as non-immigrants, nearly one half, or approximately 23,900, did so pursuant to the *NAFTA* Professional provisions.³ In the same year, Mexican *NAFTA* Professional entries to the U.S. totalled a scant 43.⁴ By 1996, these figures had grown to

² Please note that while this paper emphasizes the benefits of *NAFTA* non-immigrant entries, it focusses specifically on the temporary entry of Canadian citizens to the US. In many instances, procedures for the entry of Mexican nationals to the US differs substantially. As such, we caution you not to assume universality of *NAFTA* provisions as they pertain to Mexicans. For the remainder of this paper, references to the *NAFTA* will be discussed as they pertain to Canadian citizens only.

³ Note that this figure does not represent B-2 Visitors for Pleasure nor a large majority of Business Visitors due to the minimal documentary requirements and expedited procedures. In most cases, the INS will not issue an I-94 Arrival/Departure Record for Canadians entering the US in these categories, making statistical verification difficult.

⁴ *INS Factbook*, January, 1997 at 21.

approximately 27,000 Canadian entries and 193 Mexican entries.⁵

1. The "B-1" Business Visitor - Preliminary Considerations

Both Human Resource Managers and employees should be aware that there are a great number of activities that may reasonably be interpreted as legitimate Business Visitor activities by some and as work by others. Moreover, because the procedures for obtaining "B-1" status are relatively simple for *NAFTA*-qualified persons as well as for nationals of countries eligible for the Visa Waiver Pilot Program,⁶ particularly in comparison to procedures for obtaining permission to work temporarily in the U.S., immigration officials have increased their scrutiny of Business Visitor entries.

In the past it was not uncommon for Canadians to state the purpose of a visit as "vacation" or simply "business meetings", irrespective of their intended activities in the US. To some extent, this practice continues today. With thorough questioning and investigation, however, INS officials will often uncover the real motive for a person's proposed visit. For instance, employees entering to work in the U.S. often travel with work documents in a briefcase or handbag that indicate the true employment nature of the entry to the U.S. A cursory review of the employee's briefcase or on-board luggage is often more than sufficient to demonstrate that the he or she is not a legitimate Business Visitor.

Such misrepresentations are not simply problematic for the employee, if an INS Officer suspects or uncovers evidence that the employer is complicit in a misrepresentation, the

⁵ U.S. Immigration and Naturalization Service, *Statistical Yearbook of the Immigration and Naturalization Service, 1996*, U.S. Government Printing Office: Washington, D.C., 1997 at 121.

⁶ Approximately 50% of all documented non-immigrants enter the U.S. pursuant to the Visa Waiver Pilot Program (VWPP): Testimony of Michael D. Cronin, Acting Associate Commissioner, Programs, *Re: Non-Immigrant Overstays*, before the House Judiciary Committee, Subcommittee on Immigration and Claims, March 18, 1999. Countries in the VWPP include: Andorra, Argentina, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland (Republic), Italy, Japan, Liechtenstein, Luxembourg, Monaco, New Zealand, Norway, Portugal, San Marino, Singapore, Spain, Sweden, Switzerland, the Netherlands, United Kingdom and Uruguay).

employer may find that other employees subsequently encounter heightened scrutiny and delay at the border or Pre-Flight Inspection. As well, at border crossings, company-owned or leased vehicles used by employees can be impounded by the INS as a result of an employee's misrepresentations. Both the employer and employee must pay a price for the misrepresentation, since both must expend significant time, energy and resources to regain diminished credibility and, where possible, to secure subsequent entry to the U.S.

It is, therefore, important that Business Visitors be in a position to provide personalized, complete and accurate documentation when entering the United States. In every instance the documentation and presentation should properly reflect an employee's intended activities in the United States and the employee should be prepared to answer specific questions relating to his or her visit.

A. The *NAFTA* "B-1" Business Visitor - Legitimate Activities

Like other foreign nationals, Canadians may avail themselves of Business Visitor status if they are able to demonstrate to Immigration Officials their ties outside of the United States and their intention to exit upon the completion of their U.S. visit. Business Visitors must also be able to provide information indicating that they will be carrying out legitimate business activities. Such activities include:

- consultations,
- negotiations,
- discussions,
- research,
- participation in educational, professional, or business conventions or meetings; and soliciting business.

The *NAFTA* provisions, however, expand the basis for which Canadians may enter the U.S. as Business Visitors. In order to qualify the *NAFTA* Business Visitor must, of course, be a Canadian (or Mexican) national. Please note that Canadian Permanent

Residents do *not* qualify pursuant to the *NAFTA*. In addition, his or her activities in the United States should fall within the broadened purview of the activities set out in Appendix 1603.D.1 of the *NAFTA*. Specifically, the employee's activity must involve aspects of business in one of the following areas:

- *research and design* - including technical, scientific and statistical researchers;
- *growth, manufacture and production* - such as purchasing and production management personnel;
- *marketing* - for example, market research and analysts, trade fair and promotional personnel;
- *sales and distribution* - including sales representative and agents negotiating contacts;
- *after-sales services* - such as installers, repair and maintenance personnel and supervisors possessing specialized knowledge essential to the seller's contractual obligation; and
- *general service* - including professionals, management and financial services and public relations personnel.

B. The *NAFTA* After Sales Service Provision - Extended Entries

To a some extent the *NAFTA* provisions mirror those set out in U.S. law. There are, however, instances where the *NAFTA* provisions differ from their counterpart in U.S. law. Most notably, the After Sales Service provision is expanded in the *NAFTA* to allow for entry of qualified Canadians *for the duration of the life of a contractual warranty or service agreement*. In contrast, non-*NAFTA* Business Visitors may only avail themselves of the After Sales Service provisions of a contract for the one year period immediately after the coming into force of the contract. As the *NAFTA* permits Canadians to remain in the U.S. for as long as the contract's service provisions are in effect, Canadians have a clear advantage over other After Sales Service Business Visitors. Please note that while the *NAFTA* itself is silent on this issue, the INS has indicated that in general, a service contract or warranty, as well as the underlying sale of equipment, machinery or software, must be between a U.S. buyer and an enterprise located outside the U.S. Therefore, where a

service contract exists between a U.S. buyer and a U.S. affiliate of a Canadian corporation, Canadian personnel will not generally be admissible as After Sales Services Business Visitors.

C. An Example: *NAFTA* B-1 After Sales Service

Consider the following example of the *NAFTA* Business Visitor After Sales Service provision:

Company A is a Canadian-based company that designs and manufactures billing software that it sold two years ago to Company B, a large oil company located in Houston, Texas. The software licencing agreement stipulates that Company A is to install the product, train Company B personnel on its use and provide overall technical support to Company B for four years. Company A must transfer a two person team to comply with its obligations under the agreement. Mr. X, the first member of Company A's team, is a British national and a Canadian Permanent Resident. The second member, Ms. Y is a Canadian citizen. Both are highly educated employees having specialized knowledge of Company A's product.

Because of his nationality, Mr. X may not avail himself of the *NAFTA* After Sales Service provisions even though he is a Canadian Permanent Resident. As such, he would not qualify under standard B-1 After Sales Service provisions because the contract entered into between Companies A and B is already two years old. Recall that non-*NAFTA* After Sales Service Business Visitors may only enter the U.S. one year from the execution of the contract.

Ms. Y, on the other hand, would qualify pursuant to the *NAFTA* B-1 After Sales provision and could provide her highly technical skills in the U.S. for the duration of the contract - a further two years. Clearly, the *NAFTA* B-1 After Sales Service provision eliminates Ms. Y's need to obtain other authorization to work in the U.S., such as H-1B "specialty occupation" status, and simplifies her entry to the U.S. considerably.

2. Border Processed Work Permits

In addition to facilitating the temporary entry of Canadians as Business Visitors, the *NAFTA* also contains provisions permitting Canadians to enter the United States to work. Certain qualified professionals and employees may be in a position to take advantage of the Trade Nafta or "TN" and Intracorporate Transfer or *NAFTA* "L" provisions that allow for simplified and expedited processing. Canadian applicants can avoid the lengthy filing procedures associated filed with the Regional Processing Centers by taking the requisite application to an airport or border where it is usually adjudicated on the spot.⁷ This expedited process is in stark contrast to non-*NAFTA* L-1 intracorporate transfers and H-1B "specialty occupation" petitions which must, of course, be processed at a Regional Processing Center and may also require a subsequent consular visit to obtain the requisite visa endorsement.

A. Trade *NAFTA* ("TN") Status - Professionals

Trade *NAFTA*, or TN status, allows professionals listed in Appendix 1603.D.1 to the *NAFTA* to enter and work in the U.S. as non-immigrants. Among the professionals eligible for TN status are Accountants, Computer Systems Analysts, Engineers, certain medical professionals, Scientists, Post-Secondary Teachers and Professors as well as Management Consultants. In order to qualify for TN status, an applicant must:

- be a Canadian (or a Mexican) citizen;
- practice in one of the listed professions;
- have obtained a qualifying Baccalaureate Degree from a recognized U.S. or Canadian College or University (or a Licenciatura designation from an accredited Mexican University) *or* have accumulated educational equivalency by virtue of experience as stipulated for a designated profession; and
- perform corresponding professional-level activities in the United States.

You should be aware that the experience criteria (in cases where an individual does not

⁷ Please note that the procedure for Mexican applicants and petitioners varies substantially.

have the requisite educational qualifications) vary from profession to profession. For example:

Computer Systems Analysts who do not have a Bachelors degree may qualify for TN status if they have obtained a two year diploma *and* have a minimum of three years of work experience as a Computer Systems Analyst.

Whereas,

Management Consultants may qualify *without* a Bachelors degree if they can demonstrate that they possess five years of experience related to their area of specialty as it relates to consulting.

On the other hand, some professionals, such as Engineers, Accountants, Architects, Scientists and Nurses will not qualify unless they have obtained the appropriate educational qualifications. However, in some instances, a state or provincial licence to practice a profession may be sufficient to qualify an individual in TN status even in the absence of a Bachelors degree.

TN status may be granted for a initial maximum duration of one year. While in theory an applicant's TN status is renewable indefinitely, U.S. immigration officials frown upon repeated re-applications - they may be viewed as an attempt to circumvent other non-immigrant provisions designed to ensure that persons are not working in the U.S. for extended periods of time without proper authorization. Moreover, the applicant's continued temporary intent may come into question. In most instances, however, submitting two subsequent applications (allowing a person a maximum of three years) should not cause an employee difficulty at the Port of Entry or Pre-Flight Inspection.

(i) TN Status - An Example

Consider the following example of three employees seeking TN status:

Company Y, a Canadian-based company, has entered into an agreement with Company X to review and ensure Year 2000 compliance of Company X's computer operating systems in Phoenix, Arizona. To provide its services, Company X must transfer a three member computer service team, located in Vancouver, British Columbia to Phoenix for an eight month period. Among other responsibilities, it will be the team's mandate to carry out trouble-shooting, provide recommendations to management, and ensure that all equipment and software Year 2000 compliant.

One team member has obtained a four year Bachelor of Science Degree in physics and will be performing duties of a Computer Science Analyst while in Phoenix.

This employee should obtain status under the *NAFTA* TN provisions *even though his degree is not directly related to his profession as a Computer Systems Analyst*. Note that the *NAFTA* itself does not stipulate that an applicant's degree be related to his or her profession. There are many Canadians who obtain TN status with Bachelor of Arts degrees in, for example, anthropology, political science, psychology or history, but who carry out the duties and qualify as Accountants or Management Consultants. Of course, the closer the degree is related to the duties to be carried out, the easier it will be for the applicant to obtain TN status upon his or her meeting with INS border or Pre-Flight officials.

Back to our example, the second team member has obtained a two year Diploma at a post-secondary technical institute and has over three years of experience as a Computer Systems Analyst.

Team member two would also qualify under the TN provisions by virtue of meeting the experience criteria.

The third team member has more than nine years of experience in the information technology industry, extensive experience in Year 2000 compliance issues and a highly-coveted industry certificate.

While team member three satisfies the experience component he lacks the educational

component of the required criteria. However, he may qualify as a Management Consultant if the *duties* he is expected to be carrying out during his temporary U.S. assignment are those of a Management Consultant.⁸

(ii) TN Management Consultant: Not a Catch All

Human Resource Managers should be wary of misapplying the TN Management Consultant designation. Management Consultants are broadly defined as persons who will:

- provide services that improve managerial, operating and economic performance of a company, organization or entity;
- analyze and resolve strategic and operating difficulties or problems; or
- improve the company, organization or entity's goal's objective, policies, strategies, administration, organization and/or operation.

As the definition is so broad, the TN Management Consultant has often been used as a catch-all category for employee who do not meet the substantive requirements of other *NAFTA*-designated professional categories. However, because the Management Consultant designation is so often misapplied INS officials at borders and Pre-Flight Inspection have increased their scrutiny of such applications and routinely deny entry to applicants.

With a persuasive argument and supporting documentation, however, it is our experience that TN Management Consultant applications do succeed. Still, careful thought should be given to the merits of each employee's qualification and the duties he or she will undertake on assignment in the U.S. The misapplication of the TN Management Consultant

⁸ The Department of Labor's *Dictionary of Occupational Titles* provides guidance as to the duties carried out by professionals. In some instances, such as for the definition of Management Consultant, there may be no one particular definition. For Management Consultants, reference must be made to the *Dictionary's* definitions of Management Analyst and Consultant. In amalgamating the two, a working definition of the duties of Management Consultants may be obtained.

designation may result in missed flights, frustration, delays and angry U.S. customers who are expecting the arrival of specialized short-term personnel.

B. Border Processing - NAFTA "L-1" Intracorporate Transfers

As noted above, one of the benefits of the *NAFTA* accruing to Canadian citizens is the expedited processing of L-1A (Manager and Executive) and L-1B (Specialized Knowledge) petitions at the border or Pre-Flight Inspection. In contrast to non-*NAFTA* L-1 petitions which require the filing of an I-129 petition and supporting documentation at Regional Processing Centers in the U.S., the Canadian L-1 transferee may attend at the border or airport with the required supporting documentation and have the petition adjudicated, in most instances on the spot. The Human Resources department should be aware, however, that there are some variations in the processing times of L-1 petitions at various Northern Ports of Entry and Pre-Flight Inspection facilities in Canada. For example, Pearson International Airport in Toronto will process L-1 petitions in a matter of minutes, directly before the employee boards his or her flight Vancouver International Airport, known for delays, may take up to a week to process the same application. A call to the INS Free Trade Officer at the Port of Entry or Pre-Flight Inspection will assist in determining processing times for L-1 petitions. Notwithstanding these inconsistencies, Canadians and Canadian-based companies benefit tremendously from the expedited processing times for L-1 petitions.⁹ For information regarding the processing of *NAFTA* L-1 petitions at specific Ports of Entry or at Pre-Flight Inspection facilities at designated airports, please refer to section III of this paper, *NAFTA Procedure at Selected Ports of Entry and Pre-Flight Inspection*.

In general, to qualify as an intracorporate transfer, an employer must be able to provide proof of the relationship that exists between the respective corporate entities and must also establish that its employee:

⁹ Note that this also applies to spouses and dependant family members of the principal L-1 beneficiary who may obtain derivative L-2 status. However, non-Canadian family members who are eligible for L-2 status may require a Consular visa. Visa endorsements may be obtained only after the principal beneficiary has obtained and provided an I-94 evidencing his or her status as an intracorporate transferee.

- has at least one year of continuous employment with the affiliated company outside of the United States in the preceding three years; *and*
- is either a Manager (of personnel or of a function) or an Executive; *or*
- is employed in a position that requires "specialized knowledge" of the company's processes, procedures and/or products.

L-1A and L-1B status allows transferees to remain in the U.S. for an initial maximum duration of three years. Manager or Executive intracorporate transfers, L-1As, may extend their status for an additional two 2 year periods and may be fast-tracked for U.S. green card status. Specialized knowledge, or L-1B transferees, such as personnel with technical knowledge of proprietary software or hardware products or processes, may only extend their status once for an additional two year period. For Canadians it often makes sense to submit subsequent applications at the Port of Entry or Pre-Flight Inspection for re-entry to the U.S. due to the expedited processing at these locations.

III. NAFTA PROCEDURE AT SELECTED PORTS OF ENTRY AND PRE-FLIGHT INSPECTION

As an individual's ability to enter the US as planned is often crucial to the employer's operation, it is critical that care be taken to ensure compliance with procedures at the various Ports of Entry or at Pre-Flight Inspection. The Ports of Entry and Pre-Flight Inspection facilities listed below have designated Free Trade Officers who are in most cases available only during certain hours. TN applications, except where noted below, are adjudicated on the spot. As noted above, however, procedure varies from place to place. In each case, you should advise your client or your client's employee(s) to arrive at an airport Pre-Flight Inspection *at least* two to three hours prior to departure. In addition, where possible we recommend that TN applicants and L-1 beneficiaries attend during the hours when a Free Trade Officer will be present. We suggest that you contact each port of entry to ensure that your client is provided with the most up-to-date procedural information. The selected compilation of border and airport Pre-Flight Inspection information, below, is current to September, 1999.

1. Ports of Entry and Pre-Flight Inspection

A. Blaine, Washington

Free Trade Officers: Christine Smith and Jose Lopez
Port Director: Ms. Pat Boettcher
Address: 100 Peace Portal Drive
Blaine, WA, 98230
Phone: (360) 332-8511
Fax: (360) 322-8006

Process: The INS at the Peace Arch Bridge in Blaine advises that *NAFTA* L-1 petitions take three days to a week to adjudicate, although in our experience where the petition is straightforward, it is processed much more quickly. Free Trade Officers are usually available from 8 a.m. to Midnight, Monday through Friday, with reduced hours on weekends. Where possible, we recommend this Port of Entry for the adjudication of complicated TN applications and *NAFTA* L-1 petitions over the Pre-Flight Inspection facilities at Vancouver International Airport.

B. Buffalo, New York

Free Trade Officer: Mr. Samuel Tirrano
Port Director: Ms. Lenore Belzer
Address: 1 Peace Bridge Plaza,
Buffalo, NY 14213
Phone: (716) 885-3367
Fax: (716) 885-3521

Process: *NAFTA* L-1 adjudications are made on the spot seven days a week, although where you anticipate complications, it is advisable to attend when the Free Trade Officer is available, usually Monday to Friday from 8 a.m. to 4 p.m.

C. Calais, Maine

Free Trade Officer: Ms. Diana Barnes
Port Director: Mr. David Lumbert
Address: 1 Main Street, P.O. Box 421, Calais, ME 04619
Phone: (207) 454-2546
Fax: n/a

Process: In order to ensure on the spot adjudication of *NAFTA* L-1 petitions, it is best to attend this Port of Entry during weekdays, during working hours, if possible, as the Free

Trade Officer is on duty Monday to Friday between 8 a.m. and 4 p.m. However, straightforward L-1s may be submitted at other times.

D. Calgary, Alberta (Airport)

Free Trade Officer: Ms. Elliott
Address: Calgary International Airport, Air Terminal Building
2000 Airport Road, NE, Calgary, Alberta T2E 6W5
Phone: (403) 221-1728/1730
Fax: (403) 221-1732

Process: NAFTA L-1 petitions and TN applications may be submitted to INS for adjudication two to three hours prior to departure. However, INS has indicated that they would prefer receiving, by courier or mail, the NAFTA L-1 petitions three to five days before travelling, where possible.

E. Champlain, New York

Free Trade Officer: Mr. Bruce Moore
Port Director: Mr. Richard McCabe
Address: 234 West Service Road,
Champlain, NY
Phone: (518) 298-8433
Fax: (518) 298-7940

Process: The Free Trade Officer at Champlain is available for telephone consultations between 2 p.m. to 4 p.m. Monday through Thursday, but is present during working hours, Monday to Friday. In most cases, NAFTA L-1 petitions are adjudicated on the spot. Where necessary, the INS has advised that it is possible to make an appointment with the Free Trade Officer to review an application or petition.

F. Detroit, Michigan

Free Trade Officer: Mr. Greg Gellert
Port Director: Mr. Ed Busher
Address: 150 East Jefferson St.
Detroit, MI 48206
Phone: (313) 568-6019
Fax: n/a

Process: The Free Trade Officer at the Windsor-Detroit Tunnel is available from Monday through Friday, between 8 a.m. and 4 p.m. NAFTA L-1 petitions are adjudicated on the spot.

G. East Port, Idaho

Free Trade Officer: Mr. Dale Allen
Port Director: Mr. John Niewieroksi
Address: P.O. Box 8, US Highway 95
East Port, ID, 83826
Phone: (208) 267-2183
Fax: (208) 267-3011

Process: NAFTA L-1 petitions at East Port are reviewed in most cases is 3-5 working days, although it may be possible to expedite individual petitions where there is some urgency. In these cases, INS suggests you call in advance to ensure the availability of a Free-Trade Officer, whose hours are variable.

H. Niagara Falls, New York

Free Trade Officer: Mr. Robert Skuse
Port Director: Larry Bauthues
Address: Rainbow Bridge,
Niagara Falls, NY 14303
Phone: (716) 282-3141
Fax: (716) 282-4671

Process: The Free Trade Officer at the Rainbow Bridge is available from 8 a.m. to 4 p.m, Monday to Friday. INS at this Port of Entry suggests that beneficiaries of L-1 petitions attend during these hours to ensure their quick adjudication.

I. Sumas, Washington

Free Trade Officer: Mr. Ernie Snider
Port Director: Mr. Larry Bauthues
Address: 109 Cherry Street
P.O. Box 99, Sumas WA 98295
Phone: (360) 988-4781
Fax: (360) 988-9104

Process: NAFTA L-1 petitions may be reviewed and adjudicated in 3-5 days, although in our experience straightforward L-1 petitions are often accorded quicker adjudication, sometimes on the same day. The Free Trade Officer at Sumas is available from Monday to Friday, from 8 a.m. to 4 p.m.

J. Toronto, Ontario (Airport)

Free Trade Officer: Various
Port Director: Mr. John Smarsh
Deputy Port Director: Ms. Joyce Bronfman
Address: US INS
Pearson International Airport
Toronto, Ontario
Phone: (905) 676-2563
Fax: (905) 676-3698

Process: Perhaps because of the sheer volume of travelers to the US, the INS Pearson International Airport is arguably one of the quickest and most efficient Pre-Flight Inspection facilities in Canada. *NAFTA* L-1 petitions are adjudicated on the spot. Free Trade Officers are available any time prior to the departure of a U.S.-bound flight.

K. Vancouver, British Columbia (Airport)

Free Trade Officer: Ms. Jonni Galarza
Area Port Director: Mr. Ed Martinez
Address: Box 24139, Airport Postal Outlet
Richmond, BC V7B 1Y3
Phone: (604) 278-3360
Fax: (604) 278-3521

Process: The Free Trade Officer at Vancouver Pre-Flight Inspection is available from 6 a.m. to 2 p.m., usually Monday through Friday. *NAFTA* L-1 petitions are reviewed and adjudicated in three days to a week. Where possible, we suggest that applicants and beneficiaries attend the border Ports of Entry at Blaine, WA or Sumas, WA (noted above) to obtain status prior to travelling.

2. Even Faster Processing - The INSPASS Program

While the *NAFTA* substantially simplifies and speeds up the processing of Canadian petitions or applications, non-immigrants who have obtained B-1 or L-1 status may also benefit from the INSPASS, which expedites entry to the U.S. The INSPASS, valid for twelve months, allows non-immigrants to enter the U.S. from designated airport Pre-Flight facilities without having to pass through primary INS inspection. Instead, travelers use an automated system using data encoded on a wallet-sized card to enter the U.S.

Persons qualified to obtain an INSPASS are:

- Canadian citizens or nationals of the Visa Waiver Pilot Program;
- Non-Immigrants already holding B-1, E, or L-1 Consular visas; and
- U.S. Citizens or Permanent residents who are nationals of the VWPP or who hold Canadian citizenship.

Applications for the INSPASS may be made at both Pearson International Airport (Terminals II and III only) in Toronto and at Vancouver International Airport at no cost. The INSPASS program, therefore, further speeds the entry of non-immigrants who frequently but intermittently travel to the U.S. and provides travelers with a hassle-free basis upon which to enter the U.S.

IV. CONCLUSION

When your company has requested the temporary services of a Canadian national on a short-term basis, it is appropriate to consider Business Visitor status for the employee as a starting point. Generally speaking, Business Visitor requests are the most timely means of entering the United States for the matter can be adjudicated at Pre-Flight Inspection or the Port of Entry with relatively little preparation. For Canadians, the *NAFTA* B-1 provisions provide added benefit, for instance, where a contract of sale between a Foreign and U.S. company has been entered into providing for after sales services. On this basis, a Canadian could remain in the U.S. for an extended period of time equalling the life of the warranty or service portions of any agreement.

Unfortunately, the activities of many corporate employees entering the United States are often ambiguous in that they may or may not be appropriately contemplated under the various Business Visitor provisions. Where a Canadian employee does not otherwise qualify for temporary entry to the U.S. as a Business Visitor, Human Resource personnel should consider as alternatives the expedited *NAFTA* TN and L-1 procedures, which provide intracorporate transferees and certain qualified TN professionals access to the U.S. labor market with minimal documentary or filing requirements.

In considering and applying these non-immigrant provisions, the practitioner and Human Resource personnel will avoid the delay and the frustration that typically accompanies the filing of applications and petitions at Regional Processing Centers. With the right documents and the proper qualifications, crossing the Border can be effective, quick and painless.