



Changing Borders
Impacts, Options and Opportunities

Goods and Services: Moving People

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Immigrant v. Nonimmigrant: A World of Difference

- **Intent** is everything
- **Nonimmigrant.** Entering the U.S. for a temporary purpose/stay.
- **Immigrant.** Entering the U.S. to stay. Intent to immigrate is presumed.
- **Dual intent.** Can intend both at the same time.

Common Nonimmigrant Classifications

- B-1 Business Visitor
- TN NAFTA Professional
- E-2 Treaty Investor
- L-1 Intracompany Transferee
- H-1B Specialty Occupation

B-1 Business Visitor

- Business, not appropriate for employment or labor for hire
 - Attend business meetings in the U.S.
 - Negotiate contracts
 - Attend trade shows
- Qualifying activities under NAFTA
 - Research & design
 - Sales
 - After-sales service, etc.
 - Activities mirror the product cycle

B-1 Business Visitor

- Generally not appropriate for hands-on work
- If I am doing something that someone would normally be employed to do, probably not appropriate for B-1
- No visa required unless supervising construction work
- Border does not permit sale of goods manufactured in U.S.

TN (NAFTA) Professional

- Professional occupations, generally Bachelor's degree as minimum qualification
- Set list of occupations which qualify, little flexibility
- Easy to process at border
- \$56 fee and comparatively simple application

TN (NAFTA) Professional

- Renewable indefinitely in 1-year increments
- Not a dual intent classification
- Can be used for part-time work

E-2 Treaty Investor

- Investor and possibly employees required to further investment
- Requires visa even for Canadian citizens unless changing status in the U.S.
- Amount of investment often an issue – must be “substantial” and not “marginal”
- Investment must be put at risk

L-1 Intracompany Transferee

- More complicated than TN
- Requires “qualifying relationship” between Canadian and U.S. entities
- Must have worked for Canadian entity for at least 12 months in 3 years preceding application
- Appropriate for manager where opening first U.S. office

L-1 Intracompany Transferee

- Canadian citizens may apply at any Class A Port of Entry
- Border will adjudicate application on the spot while you wait
- Can be used for part-time, intermittent employment
- Subject to increased scrutiny of late

L-1 Intracompany Transferee

- Good classification for multi-national managers
- Dual intent classification
- Multinational managers can pursue permanent residence out of L-1 status

H-1B Specialty Occupation

- Somewhat complicated and expensive
- Think TN first, H-1B second!
- Department of Labor involvement/oversight
- Requires prior approval of petition by United States Citizenship and Immigration Services (USCIS)

H-1B Specialty Occupation

- Position must require minimum of Bachelor's degree and applicant must possess same
- More flexible than TN, but basically reserved for professional workers
- Dual intent classification
- Subject to Fiscal Year cap of 65,000!

Tips for Processing at the Border

- Be honest!!
- Be prepared!
- Make and keep copies of any applications you submit
- Try calling ahead if applying for something other than B-1 status
- **TURN OFF YOUR CELL PHONE**

Tips for Processing at the Border

- Do not keep trying different ports-of-entry to gain admission or at least disclose prior applications if you do
- Carry evidence of ties to Canada for those seeking admission as business visitors
 - Evidence of employment in Canada (recent paystubs, T-4)
 - Evidence of property owned in Canada
 - Evidence of family remaining in Canada

Tips for Processing at the Border

- Know the limits of business visitor status
- Incorporate after-sales service provisions in initial contracts
- Use business visitor status appropriately – explore other options
- Understand ownership issues in the context of applying for TN status under NAFTA
- Assuming Canadian law permits, consider conducting criminal background checks on new hires

Rule Changes

- Canadians will be required to have passports or other acceptable documentation to travel to the U.S.
- Effective date for land ports-of-entry currently in flux
- Passport rule does not affect visa exemption that Canadian citizens currently enjoy
- Be prepared for delay in obtaining passport and delays at the border