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Immigration changes make it tougher for companies

Steps HR professionals can take to ensure successful cross-border travel

By Nan Berezowski

In the post-Sept. 11 era, borders and airports have become increasingly security sensitive places. Moreover the United States and Canada recently negotiated a 30-point border declaration that will see the implementation of a number of additional security measures, ranging from the biometric tracking of Canadian passport photos to the routine registration and fingerprinting of certain nationals.

The border declaration also clearly contemplates the increased sharing of information between U.S. and Canadian authorities. Although this new reality is certainly not directed at corporate travelers, heightened security, border and pre-flight immigration processing requires especially thorough preparation, organization, and presentation.

The following 10 pointers are initiatives HR professionals can take to ensure smooth cross-border immigration processing:

Establish a corporate immigration policy and ensure the HR department has charge of the process. Request managers and employees, as a matter of routine protocol, communicate with HR well in advance of a cross-border assignment or relocation so everyone understands what the immigration process will require. By making this formal request, organizations can deter last minute urgencies and allow for sufficient time to determine exactly what documentation is needed to support an application or petition. It will also allow the manager and employee sufficient time to locate this documentation. Remember, authorities are more likely than ever to request original documents, transcripts and reference letters.

Provide the employee with a questionnaire. Provide a questionnaire to the assignee, recruit or transferee to complete. The questionnaire should ask the information necessary to start the immigration process (the purpose and duration of the assignment and the work activities the employee will perform). It should also include questions — and require answers — about criminality (including incidents that may have occurred years ago) in order to determine admissibility. The questionnaire should also address other problematic issues such as prior immigration refusals. In this way, organizations will be alerted to any red flag issues with sufficient time to address them. Always keep a copy of the completed questionnaire in the employee's file as verification that the organization did not overlook such issues key to the success of the entry and that, where required, it took the appropriate and timely action needed to address the situation.

Request basic supporting documentation at the onset of the Immigration process.

Doing so will help determine the type of non-immigrant status to apply for and the time it will take to obtain it. Having the documentation in front of you will also avoid any misunderstanding between the company, the employee and the manager as to what options are available to the employee. For example, U.S. authorities have recently announced that as of March 17, 2003, most Canadian permanent residents from Commonwealth countries will be required to obtain visas before entering the U.S. Many employees may be unaware of this recently imposed requirement. This, and other changes in the rules, will add time and effort to the entry process. So, it is best to know whether such requirements will be an issue at the onset.

Generally speaking, it is good practice to ask for a copy of the employee's passport data page and all visas and endorsements; a resume (including a description of present and past employment); and copies of degrees, diplomas, certificates and transcripts in order to fully assess the situation. Just because an employee identifies a post-secondary institution and provides sufficient years of attendance does not mean he graduated with a degree. First source documents are generally required by immigration officials, so it is smart to obtain them at the onset for an organization's own purposes. Review the documentation carefully and be careful not to make assumptions.

Obtain information from the employee's new manager. Where the HR professional does not have detailed information about the employee's intended duties — information essential to determining the proper category for U.S. entry — do not hesitate to obtain this information from the employee's new manager or supervisor. While employees can often provide useful assignment information, they tend not to sufficiently promote their specific suitability for the position. Managers, on the other hand, are usually familiar with the assignment requirements and, with a little encouragement, can provide valuable information about the employee fit. In marginal cases, the manager's reason for selecting a particular employee can make the difference between an unsuccessful and a successful application.

Determine the best non-immigrant status (TN, L-1A/B, H-1B.) With the basic information and documentation now provided by the employee and manager, it is usually possible to determine eligibility.

Often, the eligibility process is one of deduction. That is, various visas options are ruled out because the employer, employee or the position itself does not meet the prerequisites. In these types of cases, it may be a matter of going ahead with the only option available having alerted the employee, the manager and others in the company as to the limitations of the case.

In other instances, there may be more than one visa option available to the employee. Here, the challenge is to determine what status best suits both the employee's credentials and the company's objectives. For instance, if the company is considering longer term employment for the employee abroad, the decision might be made to transfer the employee as an Intra-corporate L or a Specialty Occupation H as opposed to a Trade NAFTA professional. Although the employee might be eligible for all three, the L and H are better launching pads for the green card as they have no dual intent restrictions. Moreover, depending on the circumstances the L might be preferred to the

H because it allows for fast-tracked green card processing.

Sometimes, the process of eliminating the non-eligible visa options and assessing the pros and cons of one visa's status over another can be quite nuanced; assistance from legal counsel may ultimately be necessary to determine the category of entry, and to resolve any logistical or long term implications.

Prepare and review the petition or application. It is important that the HR professional, the manager and the employee carefully review draft submissions for accuracy. The HR professional should ask the employee and the manager in writing to notify her of any amendments or additions to the submission or incorrect information. Both U.S. and Canadian laws and regulations now contemplate serious penalties for misrepresentation and, in this era of security sensitivity, oversights are not only more likely to be identified, but also to be prosecuted. It is therefore imperative that the HR professional, as the company's representative, is satisfied with everything stated in the application package.

Prepare the employee for his interview with immigration officials. This step is important as it helps the employee gain an understanding of the questions that may be asked of him and how to best respond. It also provides an overview of the application and interview process. Preparing the employee will reduce anxiety and increase the chances of a successful immigration interview. When an employee is required to attend a personal interview — whether at an airport, border, or consulate, it's a good idea to prepare the employee, over the telephone or in person, a couple days in advance. In this way, everyone knows what to expect.

Caution the employee against common pitfalls. Common pitfalls include arriving at the airport or border at the last minute; assuming the requirements applicable to a friend or colleague will also apply in the situation at hand; being unprepared for an interview with airport pre-flight inspection or border authorities; and antagonizing immigration authorities. HR should impress upon employees the importance of a well-timed and planned presentation of the petition paperwork. Where an airport or border interview does go awry, employees should be counseled to remain calm and request an opportunity to address the officer's concerns.

Stress the importance of truth and integrity through-out the immigration process. It is important that HR professionals take a pro-active role in ensuring integrity throughout the immigration process. The HR role should include cautioning employees against misrepresenting any aspect of the immigration process to authorities both verbally and in writing. While both U.S. and Canadian authorities impose penalties for misrepresentation, the Canadian legislation places a particularly onerous duty on HR professionals and others involved in preparing the application. Ensuring immigration processing integrity is particularly important in the post-Sept. 11 information-sharing, security-sensitive climate.

Post immigration followup with the employee. A standardized followup protocol helps gauge trends in the various application processes. It also provides an opportunity to obtain final copies of immigration documents for the employee HR file. For instance, the I-94 Arrival/Departure card is given to the employee at the airport or border; for most Canadians it is the only indicator of the validity period of the employee's lawful

U.S. status. Without a copy of this document, the HR department (either in Canada or the U.S.) will not know when the employee's U.S. non-immigrant status expires. The result will likely be a last minute renewal or, worse still, an inadvertent stay beyond status validity. This scenario can put the company at risk of employing a foreign national without valid work authorization.

Additionally, the Canadian hire to the U.S. should be brought into the U.S. employer's existing I-9 compliance program immediately on arrival in the United States. The time requirements for doing so are strict. Perhaps, because immigration processing for Canadians going to the U.S. is simplified this requirement is often overlooked by HR accustomed to dealing with the more complicated immigration processing required of foreign nationals from overseas. Similarly, an employee entering Canada for work purposes will normally be issued a work permit and in some cases a temporary entry visa as well. HR should keep copies of these documents on file.

The new security-sensitive environment and the 30-point border declaration has led to changes in cross-border inspection procedures at many U.S.-Canada airports and borders. In this environment of security sensitivity, it is extremely important for business travelers, assignees and transferees to be thoroughly and carefully prepared. Since Sept. 11, cross-border travel has become more difficult. But with proper planning and preparation, corporate employers can still avail themselves of options that allow for simplified and expedited work status in the United States or Canada. HR professionals, whether implementing simple procedures on a day-to-day basis or developing a corporate immigration plan, will both minimize the difficulties encountered by employees at airports and borders and protect their company's interests.

Nan Berezowski, a Canadian lawyer and U.S. Attorney-at Law, recently testified before the House of Commons Immigration Standing Committee on regulatory aspects of the Smart Border Declaration. She is an executive member of the American Immigration Lawyers Association (Canada Chapter) and co-author of a text on citizenship law. She can be reached at (416) 850-5112 or at nberezowski@canadaUSvisas.com.



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