

**EMPLOYEE ENTRIES TO THE UNITED STATES**  
**- THE CANADIAN PERSPECTIVE -**

**Presented by Nan Berezowski**

**-for-**

**Human Resources Professionals Association of Ontario**  
***Recruiting and Retention of Information Technology Professionals***

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**EMPLOYEES ENTRIES TO THE UNITED STATES <sup>1</sup>**  
**- THE CANADIAN PERSPECTIVE -**

**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 practitioner's task is to assist the clients Human Resources personal in managing the logistics of transferring a foreign national to the United States - a task that includes securing the employee's proper immigration status in the U.S. Your ability to navigate this area of immigration law in a timely and organized manner is fundamental to your clients' 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. In the past few years, however, Canadian non-immigrants including professionals, high level executives and managers have reported increasing scrutiny and delay at both borders and airports. There are also times where the reception travellers receive at airport Pre-Flight Inspection or border Ports of Entry is outright hostile.

The key to smooth entry to the United States from Canada is a well thought-out and accurate explanation of the employee's prospective activities accompanied by strong supporting documentation. Presentation is particularly key for *NAFTA*-based entries as applications, petitions and visitor entry requests are almost always carried out in person and on the spot.

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<sup>1</sup>Note: 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 clients' rights and obligations but should make a determination of eligibility based on the facts particular to each case.

In the following pages we provide you with the basic information your clients will need to make and implement short term assignment decisions. Our emphasis is 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 previous *United States - Canada Free Trade Agreement*. As part of the attempt to liberalize trade between the signatories, included in the *NAFTA* were provisions designed to facilitate the non-immigrant entry of Canadians (and Mexicans) to the U.S.<sup>2</sup>

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 a mere trickle. For example, in 1995, of approximately 48,000 Canadians<sup>3</sup> 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. In the same year, Mexican *NAFTA* Professional entries to the U.S. totalled a scant 43.<sup>4</sup> By 1996, these figures had grown to approximately 27,000 Canadian entries and 193 Mexican entries.<sup>5</sup> By 1998 the INS in the Buffalo District alone, comprising the Ports of Entry and Pre-Flight Inspection for much of

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<sup>2</sup> 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.

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

<sup>4</sup> *INS Factbook*, January, 1997 at 21.

<sup>5</sup> 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.

Southern Ontario and parts of Quebec, processed 23,046 TN applications.<sup>6</sup> Given the increasing volume of trade between Canada and the United States, there is little doubt that *NAFTA*-based applications will continue to increase sharply in the coming years.

### 1. The "B-1" Business Visitor - Vacations and Business Meetings

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,<sup>7</sup> 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.

It has not been uncommon for Canadians to state the purpose of a visit as "vacation" or simply "business meetings", irrespective of their intended activities in the U.S. With thorough questioning and investigation, however, INS officials often uncover the real purpose of the travellers 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 maybe more than sufficient indication that the he or she is not a legitimate tourist or Business Visitor.

Employee 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 employer may find that other its employees subsequently encounter heightened

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<sup>6</sup> INS Buffalo District, *Inspections* (No date).

<sup>7</sup> 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.

scrutiny and delay at the border or Pre-Flight Inspection. Ultimately, both the employer and employee pay a price for the misrepresentation, since both must expend significant time, energy and resources to regain diminished credibility and, where necessary, secure subsequent entry to the U.S.

#### **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. Canadian Permanent Residents do *not* qualify pursuant to the *NAFTA*. In addition, the applicant's activities in the United States must 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 large 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 the INS has indicated that where an individual is seeking entry to the US pursuant to the *NAFTA* After Sales provisions, the service contract or warranty upon which the company relies, 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 Service Business Visitors.

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

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

*Finance Systems Inc. is a Canadian-based company that designs and manufactures specialized bookkeeping software that it sold two years ago to Oil Co., a large oil company located in Houston, Texas. The software licencing agreement stipulates that Finance Systems Inc. is to install the product, train Oil Co. personnel on its use and provide overall technical support to Oil Co. for four years. Finance Systems Inc. must transfer a two person team to comply with its obligations under the agreement.*

*Bill, the first member of Finance Systems Inc. team, is a British national and a Canadian Permanent Resident. The second member, Sarah is a Canadian citizen. Both are highly educated employees having specialised knowledge of Finance Systems Inc. product.*

Because of his nationality, Bill may not avail himself of the *NAFTA* After Sales Service provisions even though he is a Canadian Permanent Resident. In addition, he would not qualify under the standard (non-*NAFTA*) B-1 After Sales Service provisions because the contract entered into between the two companies 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.

Sarah, 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. Sarah'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-1" provisions that allow for simplified and expedited processing. Canadian applicants can avoid the lengthy filing procedures at the Regional Processing Centres by taking the



requisite applications to an airport or border where it is usually adjudicated on the spot.<sup>8</sup> 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 which 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, in some instances only*, have accumulated educational equivalency by virtue of experience as stipulated for a designated profession; and
- perform corresponding professional-level activities in the United States.

As noted above, the experience criteria - in cases where an individual does not 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. In the latter instance, a copy of the diploma, the transcripts (if available) and letters of reference indicating at least three years of experience carrying out the duties of a Computer Systems Analyst should be presented to US Immigration authorities.*

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<sup>8</sup> Please note that the procedure for Mexican applicants and petitioners varies substantially.

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. To qualify in this manner, the applicant should obtain and present letters of reference that speak to his or her over five years of experience as a Management Consultant in a specific industry or field.*

On the other hand, some professionals such as Engineers, Accountants, Architects, Scientists and Nurses will not qualify for TN status unless they have obtained the requisite 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.

**(i) Duration of Status**

TN status may be granted for an initial maximum duration of one year. While in theory an applicant's TN status is renewable indefinitely, U.S. immigration officials increase scrutiny of repeat re-applications. They may be viewed as an attempt to circumvent other non-immigrant provisions designed to ensure that persons do not work in the U.S. for extended periods of time without the 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 applicant any difficulty at the Port of Entry or at a Pre-Flight Inspection.

**(ii) TN Status - An Example**

Consider the following example of three Canadian employees seeking TN status:

*Y2K Co., a Canadian-based company, has entered into an agreement with Phone Co. to review and ensure Year 2000 compliance of Phone Co. computer operating systems in Phoenix, Arizona. To provide its services, Y2K Co. 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 Y2K Co. team's mandate to carry out trouble-shooting, provide recommendations to management, and ensure that all equipment and software are 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 six 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 ten years of experience in the information technology industry, extensive experience in Year 2000 compliance issues and various highly-coveted industry certifications.*

While team member three satisfies the experience component by virtue of his significant experience in the information technology field, he lacks the education required by the TN (Computer Systems Analyst) 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.<sup>9</sup>

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<sup>9</sup> The Department of Labor's *Dictionary of Occupational Titles* provides guidance as to the duties carried out by persons in various professions. 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.

**(iii) TN Management Consultant: Not a Catch All**

Practitioners and Human Resource personnel 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; and/or
- improve the company's, organization's or entity's goals, objectives, policies, strategies, administration, organization and/or operation.

As the definition is so broad, the TN Management Consultant designation has often been used as a catch-all category for individuals who do not meet the substantive requirements of other *NAFTA*-designated professional categories. This over-use often leads to the misapplication of the designation to persons who may not be carrying out the duties of a Management Consultant. Because the Management Consultant designation is so often misapplied, INS officials at borders and at Pre-Flight Inspections have increased their scrutiny of such applications and are routinely denying entry to applicants on this basis. The misapplication of the TN Management Consultant designation may result in missed flights, frustration, delays and angry U.S. customers who are expecting the arrival of specialized short-term personnel.

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 qualifications and the duties he or she will undertake on assignment in the U.S.

**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 most other non-*NAFTA* L-1 petitions which require the filing of an I-129 petition and supporting documentation at Regional Processing Centres 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.

You 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 often in a matter of minutes, directly before the employee boards his or her flight. Vancouver International Airport 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 should assist in determining processing times for L-1 petitions.

Notwithstanding these regional inconsistencies, Canadians and Canadian-based companies benefit tremendously from the expedited processing times for L-1 petitions.<sup>10</sup> 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.

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:

- 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, with some seniority) or an

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<sup>10</sup> 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.

Executive; *or*

- is employed in a position that requires “specialized knowledge” of the company’s processes, procedures and/or products.

**(i) Duration of Status**

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.

**(ii) L-1 Status - An Example**

The following example illustrates the use of the L-1 petition for the transfer of qualified employees to the United States:<sup>11</sup>

*Company P is a large multinational corporation headquartered in France that develops, manufactures and markets electrical and products for the automobile, telecommunications and power generating industries. Company P(US) is a wholly-owned U.S.-based subsidiary of Company P and has offices in Boston, Massachusetts. Company P (Can), headquartered in Mississauga, Ontario, is also a wholly-owned subsidiary of Company P. Companies P(US) and P (Can) therefore qualify as affiliated "sister" companies pursuant to L-1 regulations.*

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<sup>11</sup> Note that the example below could apply equally if the beneficiary of the petition was neither a Canadian citizen, nor a Canadian Permanent Resident. As noted above, the difference between the two would be in the processing of the L-1 petition. That is, where the applicant is not a Canadian citizen nor a Canadian Permanent Resident, the application would be processed at a Regional Processing Center in the United States, not at the border or airport. Further, Consular visas may be required depending on the nationality of the beneficiary.

*Company P (US) seeks to obtain the services of Carol, a Telecommunications Electronics Technician with no degree but with over 30 years of highly specialized electrical experience. Carol, a Canadian citizen, was hired at Company P (Can)'s Mississauga offices on December 1, 1998 but during this period was in the U.S. for unrelated business on various occasions for a total of approximately two months.*

Although employed by the Canadian company for a continuous period of over one year as required by the regulations, Carol may have difficulty qualifying as an L-1B intracorporate transferee (Specialized Knowledge) by virtue of the fact that she spent two months in the United States during the qualifying period. As such, Carol may be required to wait an additional two months to reach the one year of continuous work threshold to qualify for L-1B status.

*Company P(US) also requires the services of Ahmed, an Electrical Parts Warehousing Manager at Company P(Can)'s Windsor, Ontario warehouse location. Ahmed is a Canadian citizen with 10 years of progressive experience with Company P(Can) and is exceptionally familiar with the company's products and warehousing process, including a specialized tracking system. Ahmed does not directly supervise any staff.*

Ahmed, with over one year of continuous experience with the Canadian affiliate, may obtain L-1 status in one of two ways. Company P(US) may submit a petition to INS border or airport officials on Ahmed's behalf for L-1A status as a "functional manager"; that is, as the manager of the Canadian affiliate's warehousing function. In this case, the petition must demonstrate the degree to which he is in charge of the entire warehousing process. Alternatively Company P(US) could make a L-1B Specialized Knowledge petition on behalf of Ahmed. In this instance, the Company P(US) must demonstrate that Ahmed has significant knowledge of its proprietary products, practices and warehouse procedures.

### **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. Remember, however, that procedures vary 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, we recommend that TN applicants and L-1 beneficiaries attend during the hours when a Free Trade Officer will be present. We also 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 October, 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.

### **B. Buffalo, New York (Peace Bridge)**

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 at the Peace Bridge 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. We recommend that you call ahead to ensure the Officer's availability.

### **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 the employee travels.

### **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 (Tunnel)**

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 routinely 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 in most cases reviewed in 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 (Rainbow Bridge)**

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 and efficient 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:** NAFTA L-1 petitions and TN requests are almost always adjudicated on the spot. Free Trade Officers are available any time prior to the departure of U.S.-bound flights.

### **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.

## **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 INS Passenger Accelerated Service System (INSPASS), which expedites entry to the U.S. The INSPASS, valid for twelve months, allows persons who travel to the U.S. at least three times per year 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. The INSPASS card combines automation with a hand geometry image to validate the identity of an individual. The I-823 application form is available for downloading at no cost and with instructions, at [www.ins.usdoj.gov/graphics/formsfee/index.htm](http://www.ins.usdoj.gov/graphics/formsfee/index.htm).

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 one of the 26 VWPP countries or who hold Canadian citizenship.

You should note, however, that there is some ambiguity as to who else may obtain an INSPASS. Form I-823 indicates that a Canadian Permanent Residents who are a citizens of British Commonwealth countries may apply for and be issued an INSPASS. Given these instructions, one would assume, for example, that a Canadian Permanent Resident holding an Indian passport would be eligible under the program. In fact, the INS may not issue the card to such an applicant.

When obtained, the INSPASS 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.

#### **A. INSPASS Facilities - Toronto and Vancouver**

Applications for the INSPASS may be made at both Pearson International Airport in Toronto and at Vancouver International Airport at no cost. Please note that only Terminals II and III at Pearson International Airport have INSPASS inspection facilities.

*Terminal Two, Toronto:* Located in the U.S. Federal Inspection Services area on the departures level behind Air Canada check-in counters, the enrollment center is situated to the traveller's left. The enrollment center is open daily, from 5:30 a.m. to 7:00 p.m.

*Terminal Three, Toronto:* Located the Federal Inspection Services ("FIS") area on the departures level behind the American Airlines check in counters, Non-ticketed persons wishing to enroll in INSPASS should contact the Terminal III INS supervisor at (905) 676-2563 and make arrangements to be escorted into the FIS area. Once in the FIS, the INSPASS enrollment center is located to the traveller's left. The enrollment center is open daily, from 5:30 a.m. to 7:00 p.m.

*Vancouver:* INSPASS facilities are located before the duty free shop and the US Federal Inspection Services area, on the departures level behind the US bound airline check-in counters. Hours of operation are from 6:00 a.m. to 6:00 p.m. Monday through Saturday.

#### **IV. CONCLUSION**

When your client has requested the transfer of a Canadian employee to the US 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 as B-1 applications 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 where a contract of sale between a Foreign and U.S. company has been entered into providing for after sales services. On this basis, Canadians may remain in the U.S. for extended periods of time equalling the life of the warranty or service portions of any agreement entered into.

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, practitioners should always advise personnel to consider as alternatives the expedited *NAFTA* TN and L-1 procedures. The streamlined non-immigrant categories provide Canadian intracorporate transferees and qualified professionals access to the U.S. labour market with minimal documentary or filing requirements.

In carefully considering and applying these non-immigrant provisions, the practitioner will avoid the delay that typically accompanies the filing of petitions at Regional Processing Centres. With the right documents and the proper qualifications, crossing the Border can be effective, quick and worry-free.