

The New Cross-Border Landscape

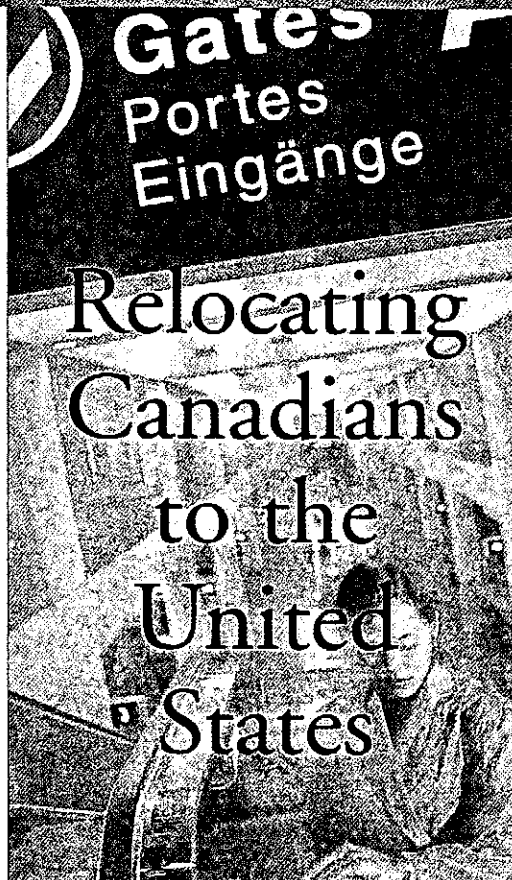
By NAN BEREZOWSKI, B.A., LL.B.

Part 1 – An Introduction

Canadians relocating to the United States enjoy immigration admission categories and simplified procedures not available to other nationals. They are also exempt from most visa requirements. However, like other foreign nationals they do require authorization to work in the United States. The good news is that when hiring a Canadian national or relocated an employee from a Canadian office to a U.S. office there are often easier and faster immigration routes available to you. Some of the options available to Canadians are not well known and as a result may come as a welcomed surprise – to lawyers, HR Managers and employees alike. These options tend to be quicker than more traditional service center processing.

Instead of filing a petition at a Regional Service Center, as is normally required, and waiting on average 6 to 10 weeks for approval from the Bureau of Immigration and Citizenship Services (BICS), and then sending the prospective employee to a U.S. Consulate abroad for visa issuance, most Canadian are able to have their petition adjudicated at a border Port of Entry or airport Pre-Flight inspection facility only hours before departing for the United States. The result, that might otherwise take months, can very often be finalized in a matter of a couple days.

In the world of business time is money and this time saving can be a godsend – particularly when a Manager is anxiously awaiting the arrival of a transferee. However, in the post-September 11th era, borders and airports have become increasingly security sensitive places. Although this new reality is certainly not directed at corporate travelers, as a result of heightened security, border and pre-flight immigration processing while still fast and



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relatively uncomplicated, does now require especially good preparation, organization and presentation.

In this article I first identify the most useful admission options available to HR Managers in charge of arranging the relocation of a Canadian, new hire or transferee, to the U.S.. Second, I identify some of the preparation techniques – the do's and don'ts of border and airport processing - that can make the difference between simple and expedited immigration processing and an intimidating cross-border experience.

Part 2 – Useful Non Immigrant 'Visa' Options Available to Canadians

Below are three of the most useful immigration categories available to Canadians relocating to the United States. As each category has its own specific requirements, restrictions and advantages it is always important to consider every aspect of the individual employee's situation - his or her qualification, logistical restraints, and your joint future plans - before deciding how to proceed.

Trade NAFTA–Professional

Perhaps the best quick fix immigration tool is the TN (or Trade NAFTA –Professional) status. Canadians apply at an airport Pre-flight inspection facility or a border Port of Entry. TN preparation can be done in a matter of days, and adjudication can often take less than an hour. To qualify the recruit or transferee must have the required professional credentials (education and/or experience) and intend to perform the duties of an approved profession. Some of the most common approved professionals we see in my office are the Computer Systems Analyst, the Engineer, the Accountant, the Graphics Designer and the Management Consultant.

Typically a Bachelor's degree is required but there are instances, depending on the particular profession, where a successful

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applicant might have a combination of a two year Post-Secondary Diploma or Certificate and three years of related experience. There are also some instances where an applicant can qualify on the basis of experience alone. Applicants will typically be required to present documentation proving their educational and experience as well as the suitability of the employment offer in the United States.

There is no limit to the total period of stay in the United States allowed under the TN category but the initial period for admission is limited to a maximum of one year. However satisfying the temporary intent requirement may become an issue with

repeat extensions and renewals. As well, the TN is not a good launching pad for permanent residence or the "Green Card".

L-1 Intra-Corporate Transfer

The L-1 is the non-immigrant status that allows companies to temporarily transfer Executives and Managers ("L-1A") and those having "Specialized Knowledge" ("L-1B") to affiliates or subsidiaries in the United States. L-1 status is available to all nationals; however Canadians may take advantage of simplified provisions under the NAFTA. Their main advantage is that they can apply at an airport Pre-Flight inspection facility or at a border Port of Entry. Again, in avoiding the Regional Service Center process, the petition approval period is reduced from 6-8 weeks to a matter of a few hours.

In order to qualify, you must normally establish that the employee has worked in an executive, managerial or specialized knowledge capacity outside the United States in a full-time capacity for the foreign parent, branch, affiliate or subsidiary for at least one year within the previous three years. You must also establish that he or she is entering the United States to work for the same company or a parent, affiliate or subsidiary, in an executive, managerial or specialized knowledge capacity.

Canadians with L-1A or L-1B status do not require a visa and are therefore not required to attend at a U.S. Consulate abroad before entering the United States. Moreover, Executives and Managers, who qualify for L-1A status, whether under the NAFTA, or the regular procedures, are subsequently in a position to qualify for U.S. permanent residence under advantageous priority provisions.

H-1B Specialty Occupation

Although not exclusively a category for Canadians, H-1B status is nonetheless a valuable tool of last resort. H-1B petitions are filed on behalf of professionals. Professionals are people who hold at least a Bachelors degree or the equivalent in a specialized field of knowledge relating to their employment, where holding such a degree ordinarily is considered a prerequisite to entering the field. The actual position being offered must require the services of a professional. Examples of job classifications that may qualify for H-1B status are Engineers, Accountants, Chemists, Computer professionals, and

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The application process involves three steps. First, the Labor Condition Attestation (LCA) must be filed with the U.S. Department of Labor. Once the LCA is certified, the U.S. employer must file an H-1B petition with the Regional Service Center. Service Centers typically take six to eight weeks to adjudicate H-1B petitions. Most beneficiaries must then obtain the requisite H-1B visa endorsement at a U.S. Consulate abroad. Canadians are exempt from this third step and are therefore eligible to work in the United States at least 2 to 3 weeks before most of their foreign H-1B colleagues.



The above overview is intended to identify the most popular options available to you as the HR Manager responsible for the relocation of a Canadian employee or recruit to the United States. But it is always important that each case is fully assessed.

Part 3 – the New Cross border Landscape

In the year and a half since September 11, 2001, American and Canadian legislators have reacted swiftly. President Bush has reorganized the immigration bureaucracy and immigration authorities are under pressure to be extremely cautious and

careful. Both countries have taken the issue of border security very seriously. To this end, the United States and Canada have negotiated a 30 Point Border Declaration that will see the implementation of a number of security measures, ranging from the biometric tracking of Canadian passport photos to the routine registration and fingerprinting of certain nationals over the next few years. The Border Declaration also contemplates the increased sharing of information between U.S. and Canadian authorities. Border teams centered in the Buffalo, NY – Niagara Falls, Ontario region have already implemented intelligence sharing systems.

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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. Canadians, Canadian Permanent Residents and others seeking to travel to the U.S. from Canada now routinely face more rigorous scrutiny when they are interviewed by INS officials. Those being interviewed can also expect longer interviews and tougher questioning. They should also expect increased scrutiny of their documentation and more regular background checks.

In this environment of security sensitivity it is extremely important the immigration petitions and applications are prepared

thoroughly and carefully. Over the past year and a half I have been asked to help a number of companies clean up their internal immigration procedures and practices. I have presented lectures to Human Resources Managers, Project Managers and Employees alike with the aim of improving corporate immigration practices. Some corporate clients have taken a stern top down approach while others have implemented simple but effective changes at the ground level.

The following 10 pointers are examples of initiatives that go along way to ensuring smooth cross-border immigration processing:

1. Set the corporate policy and ensure that Human Resources has charge of

the Process - Request that Managers and Employees communicate with Human Resources well in advance of the relocation or assignment so as to ensure that everyone understands what is required. This will also allow sufficient time to determine exactly what supporting documentation is needed and to locate this documentation - authorities are now more likely than ever to request original documents, transcripts and reference letters.

2. Provide the Employee with a Questionnaire - Provide a Questionnaire to the 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 activities to be carried out). It should also include questions - and answers - about criminality (including incidents that may have occurred years ago) in order to determine eligibility. Other problematic issues such as prior refusals should also be addressed. The HR Manager should keep a copy of the completed Questionnaire in the employee's file for future reference.

3. Request basic supporting documentation at the very onset of the immigration process - to aid in determining the type of non-immigrant status and the time it will take to obtain, always ask for:

- Copy of the passport data page and all visas and endorsements;
- A résumé (including a description of present and past employment); and
- Copies of degrees, diplomas and certificates.

In my office we never rely exclusively on résumés. We always insist on seeing copies of the actual documents. In this way we ensure that there is no confusion relating to the employee's experience and education.

4. Obtain Information from the Employee's New Manager - Where the HR Manager does not have information about the intended duties, information essential to determining the proper category for U.S. entry, obtain this information from the employee's anticipated



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Manager. Managers are usually familiar with the anticipated assignment, and with a little encouragement can provide valuable information.

5. **Determine the best-suited non-immigrate status i.e. TN, L-1A/B, H-1B** - With the basic information and documentation provided by the Employee and Manager it is usually possible to determine what status best suits the employee's credentials and the company's objectives. Assistance from legal counsel may be necessary to determine the category of entry, to assist in preparing the necessary paperwork and/or to resolve any 'red-flag' issues.
6. **Prepare and Review the Employee's Petition or Application** - It is important that both the HR Manager and the employee carefully review the attorney's draft submissions for accuracy. The Employee should notify the HR Manager of any amendments or additions to the submission or incorrect information. It is imperative that both the HR Manager and the Employee are satisfied with everything said in the application package.
7. **Caution against common pitfalls** -

Common pitfalls include arriving at the airport or border at the last minute; assuming that the requirements applicable to a friend or colleague will also apply in the situation at hand; being unprepared for the interview with airport Pre-Flight Inspection or Border authorities; and antagonizing Immigration authorities - instead, employees should remain calm and request an opportunity to address the officer's concerns.

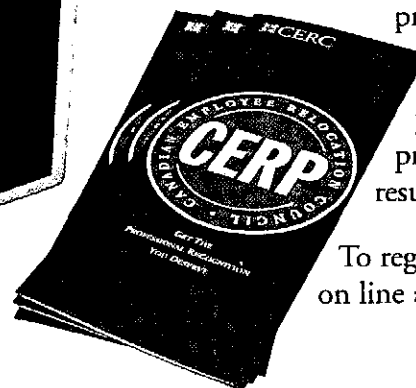
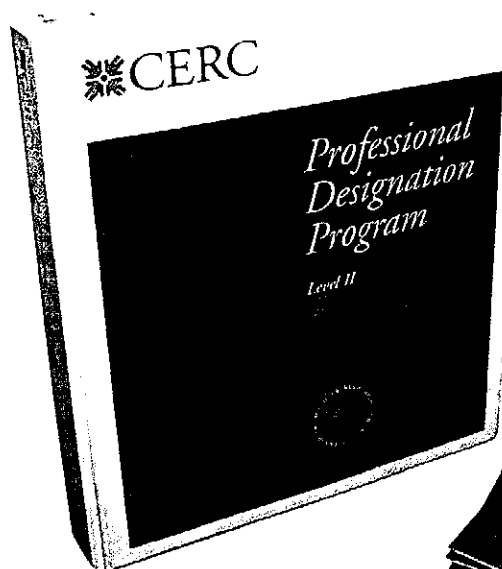
8. **Prepare the employee for his or her interview with U.S. immigration officials** - This step is important as it helps the employee gain an understanding of the questions that may be asked of him or her and how to best respond. It also provides an overview of the application and interview process. Preparing the employee will reduce anxiety and increase the chances of a successful BICS interview. My office practice is to prepare all client employees shortly before their interview with immigration officials.
9. **Stress the importance of truth and integrity throughout the immigration process** - Caution against misrepresenting any aspect of the

immigration process to authorities. This is particularly important in the post September 11 information -sharing, security sensitive climate.

10. **Post-immigration follow up with the employee** - Following up helps you gauge trends in the application process. It also allows you to collect copies of documentation for your records. The I-94 Arrival/Departure card is given to the employee at the airport or border; for some Canadians it is the only indicator of the validity period of the employee's lawful U.S. status. In my office we always request that the employee provide us with a copy of his or her I-94 card. We also send routine reminders to ensure that we obtain a copy of the I-94 card. Once obtained, we make note of the expiry date to ensure that it is renewed in a timely fashion, where necessary. You should also take steps to ensure that the Canadian hire is brought into the U.S. company's existing I-9 compliance program immediately upon arrival in the United States.

Over the past year and a half, I have seen a number of companies implement dramatic improvements in their approach to immigration on an informal level; I have also seen companies adopt comprehensive

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corporate policies for their employees' cross border travel to the United States. These initiatives, usually on the part of Human Resources, typically include many of the pointers I have described.

Part 4 – Closing Remarks

Canadians can work in the United States with relative ease. As such, HR Managers should be confident in their ability to make strategic relocation decisions and meet strict timelines. It is also true that since September 11 cross-border travel has become more difficult, however, with proper planning and preparation you can still avail your company of the options available to Canadians that allow for simplified and expedited work status in the United States. Implementing simple procedures on a day-to-day basis and developing a corporate policy will minimize the difficulties encountered by employees at airports and borders. ■

Nan Berezowski B.A. LL.B is a Barrister & Solicitor, Attorney (New York). Nan can be reached via email: nberezowski@canadaUSvisas.com

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provide practical strategies and enhanced problem-solving skills to enhance adaptation. Online cultural questionnaires are available to help the employee understand his or her "fit" within a specific cultural context, and cross-cultural education can help both expats and culturally diverse teams develop awareness of cultural nuances and skills for working more effectively in multicultural settings. At the end of the business day, working to create positive manager-employee relations can only benefit all involved, including the organization. ■

Rensia Melles is Director, Clinical Products, Global Services for FGI. She can be reached at rmelles@fgiworld.com, or (905) 886-2157.

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