



Know Before You Go: Business Entry into the United States

EXPORT SERIES

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This guide will help you prepare for a business trip to the U.S. by providing information about entry requirements for business visitors. After reading this guide, we recommend that, well in advance of your trip, you contact a U.S. Immigration Officer for guidance to fit your intended business purpose. Documentation, such as copies of contracts or a letter from an American company outlining why you are going to the United States can be very important to U.S. Customs and Border Protection. Selling services in the U.S. without products or investment is highly controlled. Intended business activities deemed contrary to U.S. immigration law may result in a ban from entering the U.S.

Chapter 16 of the North American Free Trade Agreement (NAFTA) enables the cross-border movement of businesspersons who are citizens of member countries of NAFTA. NAFTA permits businesspersons to engage in some business activities without an employment authorization (work visa) such as attending trade shows and business meetings, conducting market research, marketing products, negotiating contracts, or taking orders.

Canadian citizens may enter the U.S. from Canada to conduct business provided they qualify under several business-related categories. A brief description of each category, highlighting documents required to establish eligibility for admission in that category, is provided in the following. All of these categories cover non-immigrant (temporary) visits and do not authorize the traveler to live or work permanently in the United States.

B-1 TEMPORARY BUSINESS VISITOR

The B-1 temporary business visitor is the most common means to entry to the U.S. for Canadian business travelers. Travelers are not required to obtain a visa for this type of entry, but should carry appropriate documentation to present at the port of entry.

Guidelines:

- a. Purpose of travel – Under this status, the business visitor can attend conferences, trade shows, meetings and training sessions; provide hands-off supervision; and provide after-sales service. Any after-sales service must be outlined in the original agreement with the U.S. buyer, and must pertain to goods not manufactured in the U.S. In some cases, installation may be considered eligible as after-sales service, but generally pertains to software and not construction type work.
- b. Generally, a businessperson may not travel to the U.S. to provide speaking or training services. There are two exceptions to this rule: post-secondary professors, and those offering the service at no cost.
- c. No remuneration may be received from a U.S. source for any traveler using B-1 status.
- d. The traveler may not provide products or services directly. Rather, the order must be processed from Canada.

Documents Required: Evidence of identity and Canadian nationality, evidence of a residence in Canada, intent to depart the U.S., and documentation describing the traveler's business purpose.

Visas

1. TN NAFTA PROFESSIONAL

TN NAFTA-based occupation visas are available to Canadian and Mexican citizens. They allow businesspersons to engage in business activities at a professional level. Over 60 qualifying professional occupations are listed in Appendix 1603.D.1 of the NAFTA.

Guidelines:

- a. Purpose of Travel – The businessperson will work in positions which qualify under specific professional categories. These categories include engineer, accountant, post secondary teacher, and various scientific occupations. Business travelers should be cautious applying under the management consultant category. It is appropriate if you intend to provide one-time advice and recommendations to senior managers within a company.
- b. Note that many of these categories require a bachelor's degree. In some cases, an equivalent combination of education and experience may be accepted.
- c. Applications for this visa can be made at the port of entry. Plan to arrive 2-3 hours in advance of flying from Edmonton or Calgary to complete this process. Visas are valid for one year, and allow for multiple entries. The application fee is US\$50.

Documents Required: Evidence of identity and Canadian nationality, proof of necessary educational background and experience in one of the qualifying professions, employment letter (indicating nature and duration of employment and remuneration offered).

2. L-1 INTRACOMPANY TRANSFEREE

This visa covers transferring an employee who has worked for a foreign subsidiary, parent or affiliate company abroad for at least one year within the last three years to a U.S. company. The two firms must have a corporate relationship through ownership.

Guidelines:

- a. Purpose of Travel – The employee will be employed in the U.S. in a managerial (including human resources), executive, or specialized knowledge capacity by a branch, parent, affiliate, or subsidiary of a Canadian or international employer. The business traveler must play a key role which may include possessing special or protected knowledge.
- b. The traveler must NOT have worked in the U.S. for the past year, including business trips.

- c. Applications for this visa can be made at the port of entry. Plan to arrive 2-3 hours in advance of flying from Edmonton or Calgary to complete this process. Visas are valid for up to three years (1 year in the case of a company operating for less than one year in the U.S.), and allow for multiple entries. There is a filing fee of US\$190 to apply, and a fraud detection and prevention fee of US\$500.

Documents Required: Evidence of identity and Canadian nationality, I-129 petition (available at the U.S. port of entry), employment letter indicating nature and duration of employment and remuneration offered.

3. WORKSHOPS & SEMINARS

Persons wishing to enter the U.S. for the purpose of leading workshops or seminars must either have a working visa or their profession listed in the professional category under the TN visa. In addition, the subject must deal with aspects of that profession. There is no visa category for speakers per se, but you may qualify, if for example, you are a biologist going to the U.S. to speak on biology.

4. FIRST NATIONS & JAY TREATY

Under the Jay Treaty, Canadians who claim *Registered Indian Status* are allowed to work in the United States without an employment authorization. However, U.S. Immigration and Naturalization Service does not accept Status Cards issued by Indian and Northern Affairs as proof that you have at least 50% native blood. To meet this criteria, U.S. Immigration advises that you must present, at the port of entry, a letter (referred to as a blood quantum letter) from your Band and Indian and Northern Affairs (Ottawa) going back two generations to show your native ancestry. If you are claiming just 50% native blood, then U.S. Immigration advises that you must go back three generations. You must present both letters to U.S. Immigration every time you enter the United States.

Visas Requiring Legal Council

1. E-1 TREATY TRADER – This visa enables a business person to carry on trade between the U.S. and Canada. The applicant may be the principal trader or an employee in an executive, supervisory, or essential skills capacity.

2. E-2 TREATY INVESTOR – This visa enables a business person to direct the operation of a bona fide investment enterprise. The applicant may be the principal investor or an employee in an executive, supervisory, or essential skills capacity.

3. H-1B TEMPORARY WORKER IN A SPECIALIZED OCCUPATION – This visa enables Canadians to perform temporary work (maximum period of six years) requiring specialized knowledge and a university degree or its equivalent.

4. H-2B SEASONAL WORKERS – This visa enables Canadians to occupy seasonal or other short-term jobs (maximum period of one year) that cannot be filled by available U.S. labour. The requisite temporary job need can arise in one or more of four categories:

- One-time occurrences (i.e. foreign professional needed to train U.S. workers),
- Recurring seasonal jobs (i.e. ski instructor or landscape laborer),
- Peakload demands (i.e. special expertise or additional positions on one-time complex or large-scale projects), and
- Intermittent/occasional jobs (i.e. technicians upgrading foreign machinery).

5. H-3 TRAINEE – This visa enables Canadians to receive training (other than medical or academic) at the invitation of an individual, organization, firm, or other trainer.

Documentation

Ensure you have the proper documentation to support your reasons for entering the U.S. In addition to the required documents, carry information that verifies your intentions. For example, a brochure featuring the trade show you are attending, or a copy of the contract that outlines the details of the after-sales service you are providing will be helpful. Here is another suggestion: carry a letter on company letterhead stating the following:

- Purpose of the business trip – Ensure entry is for business activity which is international in scope
- Destination – Where you will be staying
- Contacts – List of businesses you plan to visit (address and contact person)
- Confirmations - You will be receiving no remuneration of any kind from any U.S. source; Your salary is paid by the Canadian company

U.S. Customs and Border Protection also requires your passport or other forms of photo identification, such as your driver's license and birth certificate. By 2007, it will become a requirement for all Canadian travellers entering the U.S. to carry a valid passport.

Frequent Travellers

If you visit the U.S. frequently on business by vehicle (rather than flying), NEXUS is a program you may want to consider to alleviate long wait times at the border. NEXUS is an inspection program that allows pre-screened, low-risk travelers to be processed with little or no delay by United States border officials. Approved applicants are issued a photo-identification/proximity card and cross the border in a dedicated lane where they present their NEXUS card and make a declaration. For more information about qualifications, costs and procedures, visit http://www.customs.ustreas.gov/xp/cgov/travel/frequent_traveler/nexus.xml.

Samples and Equipment

Businesspeople entering the U.S. with product samples and/or a trade show booth should contact a U.S. Customs Broker, as a Temporary Import Bond (TIB) may be required. Goods that are not controlled or regulated and qualify for NAFTA entry do not require a TIB but you will need the NAFTA Certificate of Origin. For controlled or regulated products that qualify for NAFTA, and for products that are non-NAFTA, contact a U.S. Customs Broker for information on entry procedures.

When entering the U.S. with samples not covered by a TIB, the samples must be torn or perforated to make the product unsuitable for sale, and must be indelibly stamped with the word **sample**. The invoice for samples must contain the statement **Marked Sample - Not for Resale**. A user fee is charged to business visitors if a commercial transaction is taking place or if samples are to be left in the United States. Beware that agricultural and food samples are heavily regulated and determine whether the product you are carrying is admissible into the U.S.

To avoid paying GST and duty on commercial samples when you return to Canada, you will need to fill out Canada Customs Form E-15 which is available from Canada Border Services Agency at your port of exit. Business-related goods hand-carried by a traveler may be documented on Form Y38. These include items such as computers, cellular telephones, and tools.

If you are temporarily exporting samples, equipment or other goods for presentations, tradeshows and meetings, and intend to bring them back into Canada, another option is obtaining an ATA Carnet. This "passport for merchandise" simplifies customs procedures for the temporary admission of these goods into the U.S. duty free. To find out more about ATA Carnets visit the Canadian Chamber of Commerce at <http://www.chamber.ca/carnet>.

Note also that if you are carrying \$10,000 or more in currency, you must declare it at the border.

1. PRINTED MATERIAL

Printed material must indicate the country that it was printed in. For example, material that was printed in Canada must state **Printed in Canada**. The exception to this rule would be printed goods that are NAFTA qualifying and not intended for resale, such as brochures and promotional material that would be given away (supplied free of charge). This information is covered in Article 306 of NAFTA and covers all printed material classified in Chapter 49 of the Harmonized Tariff Schedule.

2. BUSINESS GIFTS

If you wish to bring gifts (such as pens, pins, mouse-pads, etc.) with you on your business trip, U.S. Customs and Border Protection requires an invoice listing the articles and their value. Shipments less than US\$2,000 can be entered as an informal entry. The exception to this rule is textiles and textile articles (such as t-shirts or baseball caps) where the limit is US\$200. Should the shipment be greater than US\$200 then it must be entered as a formal entry and a Textile Declaration form will be required. Please be aware that textiles and textile articles which are not NAFTA qualifying may not be allowed entry as the U.S. has quota restrictions in place with some non-NAFTA countries.

Selling Your Goods in the U.S.

Canadian businesspeople may enter the U.S. to attend trade shows, meet with buyers, look for reps and **take orders**, but you cannot accept money in exchange for actual products and services. Unknowing Canadians have been turned back at the border or in some cases, have had their products seized as they attempted to cross the U.S. border to directly sell products.

If you wish to have your products featured in a trade show, you have two options. The first is to bring samples only to a show and write orders (which is how most trade shows are conducted), and then ship your products when you return to Canada. The second option is to sell your products to an American distributor who will, in turn, resell. The only way you can be exempt from this law is if you hold dual citizenship (U.S. and Canadian) or if you qualify under Jay Treaty.

Though these rules appear strict, remember that the North American Free Trade Agreement (NAFTA) actually favors Canadians, Americans and Mexicans wishing to do business in each others' countries. If you have any questions relating to the law and how it may affect a special situation, it is best to call the U.S. government for clarification (contacts provided at the end of this guide).

Criminal Records

If you have been convicted of a crime or admitted to elements of illegal activity, you may be inadmissible to the U.S., even if you were not charged. Also, business travelers need to know that criminal records are never erased, that records that have been sealed may still be accessible by U.S. officials, and that Canadian pardons are not recognized in the U.S. This said, not all criminal convictions will mean you are inadmissible. To avoid embarrassment at the border and delays of your business trip, companies should verify this information when sending an employee to do business in the U.S. If you are concerned about whether a past conviction may cause you or an employee to be

inadmissible to the U.S., consult U.S. Customs and Border Protection or a U.S. immigration attorney (contact information available at the end of this guide).

Additional Information

U.S. Citizenship and Immigration Services (USCIS) Information for Temporary Visitors:
<http://uscis.gov/graphics/services/tempbenefits/index.htm>

“Cross - Border Movement of Business Persons and the North American Free Trade Agreement”: <http://www.dfait-maeci.gc.ca/trade/nafta-alena/cross-en.asp>

U.S. Consular Services: Canadian Business Travel to the U.S.:
<http://www.usembassycanada.gov/content/content.asp?section=travel&subsection1=visa services&document=canbustravel>

U.S. Consulate in Alberta: (403) 266-8962

U.S. Department of State: <http://travel.state.gov/visa/tempvisitors.html>

U.S. Customs and Border Protection Free Trade Specialists:
Edmonton International Airport (780) 890-4486,
Calgary International Airport (403) 221-1730,
Sweetgrass (border crossing), Montana (406) 335-9610

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