

Visa Options for Canadians Doing Business in the United States

Approximately \$1.5 billion in goods and services cross the U.S.-Canadian border each day. Since the North American Free Trade Agreement (NAFTA) was ratified in 1994, trade between the two countries has increased every year to the point that the U.S. accounts for four-fifths of Canadian exports and three-fourths of imports. One staggering statistic is that the U.S. is the destination for 93% of Ontario's exports (Ontario Economic Outlook, Nov. 2000). Enhanced access to the U.S. after NAFTA means increased opportunities for Canadian businesses and individuals. As evidenced by the many inquiries we receive, a seemingly common misconception exists that NAFTA has liberalized the procedures for conducting business in the U.S. In actuality, visas are still required for individuals wishing to trade with or work within the U.S. Many Canadians are surprised by how difficult and complicated the process can be.

The most utilized non-immigrant visas by Canadians are TN, H-1B, L-1, E-1 and E-2. Each visa has a different set of requirements and privileges attached to it. For example, the L-1 and the H-1B visas can lead to permanent residency. If you are interested in doing business in the U.S., it is wise to seek legal counsel to determine if you qualify for one or more visas, and if so, which particular one is the most appropriate for your circumstances.

NAFTA created a new category, the TN visa, for eligible Canadian professional workers. The TN visa is available to Canadian citizens who practice certain professional occupations. You can refer to www.visas2usa.com for a list of professions that fall under NAFTA. A bachelor's degree, license and/or experience are required. You must have a U.S. job offer and you must meet the minimum requirements for your particular profession. A properly completed document package, supported with authoritative proof means you can proceed to any U.S. port of entry where an immigration officer will judge your application. When your status is approved, you are given an I-94 card and immediately admitted to the U.S. There are no quotas and you have status to live and work in the U.S. for one year. You can renew your status. The quick timeframe in receiving TN status makes this an appealing prospect for many Canadians.

H-1B Specialty Worker visas are available to individuals who work in a specialty occupation or to fashion models of distinguished merit. To qualify for this visa, unless you are a fashion model, you must have at least a bachelor's degree or substantial on-the-job experience that is equivalent to a bachelor's degree. Among some of the requirements are that you first must have a job offer from a U.S. employer and the employer must have filed a Labor Condition Application with the U.S. Department of Labor on your behalf. The quota for available H-1B visas for fiscal year 2001/2002 is 195,000 and visas are usually issued within two to four months.

L-1 Intracompany Transferee visas are available to employees who work for a company with a parent, subsidiary, branch, affiliate or joint venture in the U.S. You must have been employed for the company outside the U.S. for one continuous year out of the last three as a manager, executive or as a person with specialized knowledge and will perform in a similar capacity once transferred. You can also apply for a L-1 to open a new office, in which case your visa is initially approved for one year, after which time additional evidence is filed to extend the visa. There are no quota

restrictions. Petitions are usually approved within 4 to 8 weeks and visas usually issued several weeks after petition approval.

E-1 Treaty Trader visas are available to nationals of specific countries that have commercial treaties with the U.S. and who will engage in trade of a substantial nature between the U.S. and the treaty country. Canada is a treaty country under both E visa categories. To qualify, you must be coming to the U.S. to work for a business, at least 50% of which is owned by citizens of your treaty country. E-1 visas are issued only to principal owners or key employees, provided all have the same treaty nationality. More than 50% of the company's trade must be between the U.S. and the treaty country.

E-2 Treaty Investor visas are available to nationals of specific countries that have commercial treaties with the U.S. and who will direct and develop a U.S. business in which the individual has invested or is actively involved in the process of investing a substantial amount of capital. Investment in stocks, land speculation or holding companies does not qualify. E-2 visas are issued to principal owners or essential employees, as long as all share the same treaty nationality. To qualify as a principal owner, you must own at least 50% of the business and show operational control through a managerial position or by other means. To qualify as an essential employee, you must be an executive, supervisor or possess highly specialized skills. There are no quota restrictions for either E visa and visas are usually issued within two to four weeks.

We often hear immigration horror stories, usually from people who tried to complete immigration forms themselves or enlisted the aid of a beleaguered human resources manager. Dealing with the U.S. Immigration and Naturalization Service (INS) can be a daunting process and not one to be taken lightly. The INS has strict procedural rules and filing requirements and any error will mean delay or denial of a visa. We have clients who come to us after having had their visas denied and after we properly re-filed their applications, they were issued visas. It is far less costly in terms of time, aggravation and money to file a correct application in the first place. For example, with regard to H-1B and TN visas, not all U.S. employers are willing to keep open your job if your visa was initially denied. Also, for H-1B's you run the risk with each passing day that the quota will be filled. Do not be a martyr. Be prudent and seek an experienced immigration attorney to ensure you will not have to endure your own immigration nightmare. For more information, you can visit our websites at www.immigrate.net and www.visas2usa.com or contact us for a consultation.