



## Canada: Temporary Entry of People under NAFTA

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### Summary

U.S. Companies wanting to bid on Canadian contracts, establish strategic partnerships with Canadian companies, temporarily employ non-Canadian workers in Canada or send employees temporarily to work with their Canadian business partners should be aware that they may be able to do so under the North American Free Trade Agreement (NAFTA). This report discusses the different categories of allowable temporary entry, as well as situations where temporary entry is not granted.

### Background

U.S. employees who want to enter Canada as a temporary worker may do so either through a work permit, or under NAFTA (if meeting the requirements). There are four categories of temporary worker entry under NAFTA; business visitors, professionals (there is a list of 63), intra-company transferees and trade & investors. For most day-to-day business, the category of business visitor applies. The information provided in this report applies only to U.S. and Mexican Citizens seeking temporary (not permanent) entry into Canada.

**Important Note:** *Much of the language used in this report is taken from NAFTA documents in order to avoid misinterpretation of definitions and requirements. There are some exceptions to the provisions listed and the final decision on whether to allow entry into Canada lies with the Immigration Officer at the border. U.S. business travelers are encouraged to contact a Canadian Embassy or Consulate or a law firm that specializes in immigration law before departing for Canada if they have any questions about temporary entry. For full-details on any of the information presented here visit Citizenship and Immigration Canada's website: [www.cic.gc.ca](http://www.cic.gc.ca).*

### Business Visitors

According to NAFTA, a business visitor is "a business person seeking to engage in a business activity set out in [Appendix 1603.A.1](#), without requiring that person to obtain an employment authorization, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry....". In summary, any professional engaged in business activity under NAFTA but not receiving salary or other payment from a Canadian source. This may include but is not limited to management, supervisory personnel, financial services personnel, public relations and advertising personnel, tourism personnel, tour bus operators and translators/interpreters. This does not include people who intend to enter the Canadian labor market (i.e. to work for a Canadian employer or under contract to a Canadian company).

Under NAFTA allowable business visitor activities include:

- Research and Development
- Growth, manufacture and production
- Marketing
- Sales
- Distribution, purchasing
- Negotiations
- Meetings/conventions/conferences
- General Service
- After-sales service

### **After-Sales Service**

This activity consists of installers, repair and maintenance personnel, and supervisors that:

- have specialized knowledge essential to the seller's contractual obligations.
- perform services or train workers to perform services (pursuant to an original warranty or other service contract related to the sale of commercial or industrial equipment or machinery, including software, manufactured in Canada). This provision, however, does not apply to residential sales or items.

Specialized knowledge, in relation to after-sales service, is defined as a high degree of knowledge that can only be passed on to an already skilled person through extensive training. Hands-on building and construction work, either on-site or in-plant does not fall under the after-sales service category. This applies regardless of the wording in the sales, warranty or service agreements, as is not considered to require specialized knowledge. A U.S. businessperson, however, may supervise or train workers that carry out installation, repair or maintenance work involving building or construction activities.

Third-Party Service takes place when a seller located in Canada contracts the after-sales service to a third party and is allowable under NAFTA. The original contract or bill of sale **must** clearly specify that a third party will perform the installation, warranty or service work.

The initial warranty or service agreement may be extended if the sales agreement, or the initial warranty or service agreement, provides for such an extension. In this case, the after-sales service continues to be part of the sale of equipment, machinery or computer software.

### **Requirements for Business Visitors**

Business visitors, in addition to meeting the above criteria, must also be able to do the following:

- Provide proof (e.g. a letter from the employer) that the employee plans to engage in an approved business activity (those set out in [Appendix 1603.A.1](#) of NAFTA and listed above). The letter must describe the purpose of the employee's entry into Canada.

- Provide proof (e.g. a letter from the employer) explaining that the proposed business activity is international in scope and that the employee is not planning on entering the Canadian labor market, by showing that (i) the primary source of remuneration for the proposed business activity is outside Canada; and (ii) that the principal place of business and the actual place of accrual of profits, at least predominantly, remain outside Canada.
- If the employee is a "professional" (see table below in section on professionals) they may qualify for entry under the general service provision of the business visitor category. If this is the case then the employee must also be able to prove that they have the minimum education requirements listed in the table for their profession (a letter from the employer or a copy of the employee's professional license, certification, accreditation or registration suffices).
- If the employee is seeking entry as an after-sales service person, they must provide copies of the original sales, warranty, or service agreement, and any extension to this agreement.

### **Length of Stay**

Business visitors are technically allowed to stay for a period of one year, although this is at the officer's discretion and is very rarely granted. Generally, the length of stay permitted for a business visitor is up to six months. For after-sales service personnel the duration of the stay granted is generally equivalent to the amount of time required to carry out the service obligation. Applicants can apply at the Canadian Port of Entry, but it is recommended that if time allows (4-6 months), an application be submitted to the Canadian Embassy or Consulate in advance.

### **Frequent Travelers**

Business visitors that travel to Canada frequently over an extended period of time and always enter for the same reason can request, at the Canadian point of entry that a visitor record be issued to them. This document will facilitate subsequent visits to Canada. There is no cost to obtain a visitor record, but whether or not to issue one is at the discretion of the immigration officer.

### **Professionals**

According to NAFTA, a professional is "...a business person seeking to engage in a business activity at a professional level in a profession set out in [Appendix 1603.D.1](#), if the business person otherwise complies with the existing immigration measures applicable to temporary entry..." Under the NAFTA agreement, there is a list of 63 professions that receive preferential treatment for entry into Canada. This includes engineers, computer system analysts, most scientists, most medical professions, accountants, economists and management consultants.

The arrangement to provide professional services can be as a result of an employee-employer relationship with a Canadian enterprise, a signed contract between the business person and a Canadian enterprise, or a signed contract between the business person's U.S. or Mexican employer and a Canadian enterprise. Since this report is written for U.S. companies, the last option will be assumed in explaining the requirements below.

Under NAFTA, some U.S. and Mexican professionals are not subject to Canada's job validation process, whereby the Canadian employer must prove that there are no willing and qualified Canadians to fill the position. However, professionals do require an employment authorization from the Canadian government. The individual must also provide proof of the minimum education requirements or alternative credentials for their profession as set out in NAFTA. For a complete list of occupations included under the category *Professional*, please visit the [CIC Website](#).

### **Requirements for Professionals**

Professionals are eligible for an employment authorization under NAFTA if they have pre-arranged employment with a Canadian enterprise in one of the above listed professions and are qualified in that profession. The following information must be provided:

- the proposed employer(s) in Canada
- the profession (including position title and duties) under which you are seeking entry
- the purpose of entry
- the anticipated length of stay
- the educational qualifications or alternative credentials required to perform
- the profession-level duties to be performed
- the arrangements for remuneration of services to be rendered

Generally, a letter from the U.S. employer, a letter from the contracting Canadian enterprise and a copy of all relevant educational qualifications should be presented.

### **Length of Stay**

The length of stay for professionals is not limited. However, the situation must continue to be "temporary," i.e. the individual should plan to return to the United States and not plan on remaining in Canada indefinitely. Professionals that qualify for temporary entry under NAFTA will be issued an employment authorization with a maximum duration of one year. Extensions may then be granted in one year increments.

### **Intra-Company Transferees**

According to NAFTA, an intra-company transferee is: "...a business person employed by an enterprise who seeks to render services to that enterprise or a subsidiary or affiliate thereof, in a capacity that is managerial, executive or involves specialized knowledge, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry." Basically, this category applies for managers, executives or specialized knowledge workers if there is a corporate affiliation between a U.S. and a Canadian company and the intent is to transfer one worker from the United States to the Canadian affiliate.

As with professionals, intra-company transferees are not subject to Canada's job validation process, but they will be issued an employment authorization.

## Requirements for Intra-Company Transferees

In order to receive an employment authorization as an intra-company transferee, you must provide a letter from the U.S. or Mexican employer that includes the following information:

- Confirmation that the transferee has been engaged in the U.S. company's current employment for at least one year within the three-year period immediately preceding the date of the application for admission.
- A detailed outline of the purpose and position for which entry to Canada is being sought.
- A detailed outline of the transferee's current job description, position title and place in the organizational structure of the company, confirming that the transferee has been performing similar work for the U.S. or Mexican employer.
- In the case of a person with specialized knowledge (means special knowledge of the Canadian enterprise's product, service, research, equipment, techniques, management or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures), evidence that the transferee possess such knowledge and that such knowledge is necessary for the proposed employment in Canada.
- The duration of the temporary assignment.
- A clear and comprehensive description of the relationship between the company in Canada and the employer in the United States or Mexico.

## Length of Stay

An intra-company transferee employed in an executive or managerial capacity may remain in Canada for up to 7 years. An intra-company transferee with specialized knowledge may remain for up to 5 years. Individuals who qualify as intra-company transferees will be granted an employment authorization with a maximum duration of one year, which may be extended for increments of two years. To avoid complications, long-term employees generally apply for permanent residency in Canada.

Intra-company transferees may apply at the Canadian Port of Entry or, if time permits, at the local Canadian Embassy or Consulate.

## Traders and Investors

According to NAFTA, a trader and investor is "a business person seeking to:

- a) Carry on substantial trade in goods or services principally between the territory of the Party of which the business person is a citizen (i.e. the United States or Mexico) and the territory of the Party into which entry is sought (i.e. Canada), or
- b) Establish, develop, administer or provide advice or key technical services to the operation of an investment to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital, in a capacity that is supervisory, executive or involves essential skills, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry."

To qualify as a trader, over 50 percent of total volume of international trade must be between Canada and the United States. To qualify as an investor, the U.S. employer must have at least 50 percent ownership of the Canadian enterprise or possess operational control through a management position or other corporate device. All applicants must be acting in an executive or supervisory capacity, or one which involves essential skills.

### **Requirements for Traders and Investors**

To apply for temporary entry as a Trader or Investor the "Application for Trader or Investor Status (IMM5321)" must be completed, in addition to the application for a work permit. This form, which can be obtained at any Canadian Embassy or Consulate or any Canadian Immigration Office, will ask the applicant to provide details of the trading activities or the applicant's current or planned investment. The applicant will be required to prove that their company has U.S. or Mexican "nationality" (this can be established by providing a letter from a corporate secretary or company lawyer attesting to ownership of the organization). Applicants must apply to a visa office outside of Canada.

#### **To qualify for trader status, the following criteria must be met:**

- The enterprise in Canada has U.S. or Mexican "nationality"
- The predominant activity in Canada will be to carry on substantial trade in goods or services, principally between Canada and the United States or Mexico
- The capacity in which the applicant will be performing in Canada is executive or supervisory in nature, or involves essential skills.

Also, if the applicant is working for a person who already has trader status in Canada, the applicant may qualify for trader status as well.

#### **To qualify for investor status, the following criteria must be met:**

- The enterprise in Canada has U.S. or Mexican "nationality".
- The applicant is seeking temporary entry solely to develop and direct the operations of an enterprise, in which they have invested, or are actively in the process of investing, a substantial amount of capital.

If the applicant is working for someone who already maintains investor status in Canada and is discharging an executive or supervisory function, or the applicant possesses skills essential to the firm's operations in Canada, then they may qualify for investor status.

### **Length of Stay**

If the application is approved, the trader/investor will be issued an employment authorization for a maximum initial stay of two years. Extensions may be granted for two years at a time, with no maximum number of extensions. There is no time limit on how long the trader/investor can remain in Canada, as long the applicant maintains an intention to eventually depart Canada.

## Basic Entry Requirements for Travel to Canada

In addition to the requirements for each category of temporary entry, all temporary entrants must meet the following basic entry requirements and carry documentation proving each:

- Valid travel document - such as a passport or other government issued travel information such as NEXXUS
- Enough money for stay and return home
- Proof of intent to leave Canada at the end of the visit
- No criminal, security or health risks to Canada

U.S. citizens with a criminal record may not be allowed to enter Canada. This includes some charges that are considered criminal in Canada, but not in the United States, such as Driving Under the Influence.

## Implications and Considerations for U.S. Business

The governments of the NAFTA countries have recognized that it is necessary to provide more liberal movement of people across the borders within North America in order for the benefits of NAFTA to be realized. To facilitate this, these provisions on the temporary entry of people were developed. However, it does not mean that there are no controls and it is essential that all U.S. business persons traveling to Canada be able to provide documentation describing the nature and purpose of their trip to Canada in order to avoid difficulties at the border.

## Canadian Embassy and Consulates in the United States

Please visit the [Department of Foreign Affairs, Trade and Development Canada's \(DFATD\) website](#) for a listing of the Canadian Embassy and Consulates in the United States.

### The U.S. Commercial Service — Your Global Business Partner

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### For More Information

If you would like further information contact Tracey Ford, Commercial Specialist at the U.S. Commercial Service in Ottawa at:

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