

The U.S. TAXFAX



NEWSFLASH
INDIVIDUAL TAXPAYER ID NUMBER

Date of Issue: May of 1998

We have done it! After many months of negotiations with the IRS, they have finally approved our application to become a **Certifying Acceptance Agent**. This means that we can now process Form W-7, Application for IRS Individual Taxpayer Identification Number. Please refer back to the 12th edition of the U.S.TAXFAX for some information on Form W-7 and the role of a Certifying Acceptance Agent. In order to process the application, we will need to meet with the applicant and certify original documentation substantiating his or her identity and Canadian residency. The completed application is then faxed to the IRS and the ITIN is received in approximately four weeks.

TOPIC: U.S. IMMIGRATION VISAS AND WORK PERMITS

In this edition of the U.S.TAXFAX, we will stray a little from our area of expertise and touch on a topic that we are frequently asked to comment on. This topic is U.S. immigration and the various types of work permits available to Canadian residents wishing to work in the United States. Please keep in mind that we are not lawyers and that the following commentary is provided for informational purposes only. We strongly recommend that an immigration lawyer be consulted prior to commencing work in the United States.

If you or your clients conduct business in the U.S., it is vital for all persons crossing the border to have the correct work permit. U.S. Immigration will deny entry into the United States if an individual is using the wrong type of work Visa or has no Visa at all.

Once denied access, the application process for the correct type of Visa usually takes much longer and is much more expensive than if the application had been prepared correctly the first time.

The types of temporary work permits that we encounter most often are as follows:

- TN, Treaty Nafta,
- L-1, Intracompany Transferee,
- B-1, Temporary Visitor for Business,
- H-1B, Temporary Professional Worker.

TN, Treaty Nafta

This Visa has become the most popular for individuals temporarily working in the United States as no extended application process is necessary and the costs to obtain it are minimal. A TN Visa can be obtained in minutes at the port of entry with very little paperwork. It is valid for one year, and at the present time, can be renewed as many times as necessary.

A common misconception with the TN Visa is that everyone is eligible and that it does not matter in which profession you are in. **This is not correct.** To qualify for a TN Visa, you must meet the following requirements:

- a. be a Canadian Citizen;
- b. be entering the U.S. to work in one of the professions listed in the NAFTA agreement and be a recognized TN professional (usually someone with a baccalaureate degree);
- c. provide evidence of intended U.S. business activity and remuneration arrangements with U.S. employer; and
- d. U.S. employment must be temporary.

One of the most common methods of satisfying b., c., and d. in the above list is to obtain a letter from the U.S. employer. If the individual changes jobs or begins work for another employer, he or she must apply for a new TN Visa.

L-1 Visa, Intracompany Transferee

The L-1 Visa is the second most popular Visa that we encounter. The application process is more complicated than that for the TN Visa and should only be attempted with the assistance of an immigration lawyer. This Visa should be considered if the length of stay in the U.S. is going to be more than 1 year and/or the transferee does not qualify under the TN provisions. To qualify for an L-1 Visa, the following requirements must be met:

- a. The Canadian company who employs the transferee must in some way be related to the U.S. company who wants to employ the transferee;
- b. The Canadian company must continue operations outside the U.S. while the transferee is working for the U.S. company;
- c. The transferee must have held an executive or managerial position, or one requiring specialized knowledge with the Canadian company for one full year within the three years immediately preceding the application date;
- d. The transferee must perform the same position for the U.S. company as he or she performed for the Canadian company; and
- e. The employer must have a U.S. premises.

One of the advantages of the L-1 Visa is that once obtained it is valid for 3 years. The disadvantage is that there is a time cap on how long an employee can be in the U.S. on L-1 status - this is seven years for executives and managers and 5 years for all others.

B-1, Temporary Visitor for Business,

This is another popular work permit for those employees who need to travel to the US on business. It only applies to those businesses that export products to the U.S. and otherwise have no U.S. operations.

To qualify for B-1 status, the following requirements must be met:

- a. must leave the U.S. when work is completed;
- b. must perform services and be compensated by a non - U.S. employer;
- c. ownership of employing company must be located outside of the US; and
- d. must be entering to perform acceptable B-1 duties.

A B-1 work permit is valid for trips not exceeding one year in length.

Obtaining B-1 status is as simple as stating your business purpose to an immigration officer at the port of entry and declaring that you wish to apply for a B-1 work permit. If the individual must enter the U.S. on a regular basis, it is possible to arrange for an I-94, Arrival and Departure Record. This form is proof that you have been approved for B-1 status and should make subsequent trips easier.

H-1B Status, Temporary Professional Worker

This Visa is very similar to the TN Visa discussed previously in that it is available to professionals who are entering the U.S. to work in a specialty occupation. Usually, if an individual qualifies for a TN Visa they can also obtain an H-1B. The advantage of H-1B status over TN status is that H-1B lasts for three years and the applicant is able to apply for permanent residence status while working in the U.S.. The major disadvantage is that the paperwork to prepare the application can be substantial and it can take 6 to 10 weeks to obtain approval from INS.

Please note that there are many other ways to enter the United States besides the work permits mentioned above. We strongly recommend that individuals seek the advice of an immigration lawyer before entering the United States on business.

Please remember that the information presented is general in nature and does not constitute professional advice. It is recommended that accounting, legal or other professional advice should be sought before acting upon any of the information contained herein.