

U.S. ENTRY FOR MANAGEMENT CONSULTANTS

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The purpose of this document is to help members better understand their rights and to help them better prepare themselves to enter the U.S. on consulting assignments.

For additional information and updates, please visit CMC-Canada's website, www.cmc-canada.ca.

RESOURCES

Overview of Canadian NAFTA Professional Workers (from the US Bureau of Consular Affairs):
http://travel.state.gov/visa/temp/types/types_1274.html

Professions covered by NAFTA (from the US Embassy):
<http://canada.usembassy.gov/visas/doing-business-in-america/professions-covered-by-nafta.html>

NAFTA Professional TN Visa information (from the US Dept of Homeland Security):
http://www.cbp.gov/xp/cgov/travel/id_visa/citizens/tn_status.xml

An Immigration Lawyer's take on NAFTA requirements for TN-1 Visa:
<http://www.tnvisabulletin.com/nafta-tn-management-consultant/>

SUMMARY

There are two categories under which CMC-Canada members may temporarily work in the U.S. in their professional capacities: Business Visitors or Professionals under NAFTA. This document will primarily focus on the Professionals under NAFTA category.

BUSINESS VISITORS

This category existed before NAFTA and continues to exist separate from NAFTA. CMC-Canada members might visit the U.S. under this category to participate in a business conference, to meet with prospective clients to promote one's services, to negotiate contracts, or for general service reasons. Entry must be for temporary purposes and your principal place of business must not be located in the U.S. It is left primarily to U.S. immigration officials to determine if one qualifies for entry under this category.

U.S. Citizenship and Immigration Service officers (USCIS, formerly the INS)¹ often require

¹ On March 31, 2003, INS moved from the Department of Justice to the Department of Homeland Security and changed its name to the USCIS.

business visitors to have an I-94 visa. Obtaining an I-94 visa will facilitate entry into the U.S., if you enter the U.S. frequently or intend to stay in the U.S. longer than a few days. Application for an I-94 visa can be made at U.S. ports-of-entry where USCIS offices are located.

PROFESSIONALS UNDER NAFTA

Management Consultants are one of the 63 professions listed in Appendix 1603-D-1 of the NAFTA as a category of professionals allowed reciprocal temporary entry into the United States. This means that a management consultant may enter the U.S. on a temporary basis and without having to satisfy the usual job-validation process to carry out management consulting services for an employer or by virtue of a contact with a firm in the U.S. These services include performing training functions or conducting seminars within one's area of expertise.

The NAFTA route has become more popular than the "Business" category for those professionals who qualify under NAFTA.

The professional services provided to qualify under NAFTA must be temporary, periodic or on a fixed consulting basis rather than as full-time employment. One must also have a baccalaureate or licenciatura degree in a field germane to management consultancy, or at least in a field germane to the consulting assignment for which entry to the U.S. is being sought. Alternatively, if one can demonstrate five years' experience as a management consultant or five years' experience in a field relating to the consulting agreement, one may also qualify.

An application can only be made at a U.S. port-of-entry that has a USCIS presence and can be made only at the time of entry. **There are no application forms to complete in advance.**

The USCIS carefully watches applicants in the management consultant category because of past abuses. Persons who don't qualify under any of the other 62 categories often claim to be management consultants to gain entry to the U.S. As such, the category has become something of a "default" or "catch-all" category. As a result, it has come to CMC-Canada's attention that USCIS has devised an "administrative order" relating to management consultants that require applicants automatically to be referred to USCIS supervisors.² Furthermore, "management consultant" is one of the few professional categories to which an interpretive note has been attached. It reads as follows:

"A MANAGEMENT CONSULTANT provides services designed to improve the managerial, operating and economic performance of public and private entities by analyzing and resolving strategic and operating problems. Consultants may assist and advise in implementing recommendations but do not perform operational work for clients.

Typically, a management consultant is an independent contractor or an employee of a consulting firm under contract to a client from a member country."

² CMC-Canada is attempting to address this issue with USCIS officials.

Although the interpretive note refers specifically to independent contractors, most of the complaints registered with CMC-Canada come from self-employed management consultants where entry to the U.S. has been denied, or unreasonably delayed. One reason appears to be that USCIS officials are suspicious that a sole practitioner is entering the U.S. in order to set up a business there, or in order to join the U.S. labour force. Accordingly, there is greater attention to documentation, in particular the contract for services for which entry to the U.S. is being sought. Otherwise, the requirements for sole practitioners are identical to those of anyone else entering the U.S. as a Professional .

CMC-Canada has also received complaints that members are denied entry by USCIS officials for spurious reasons such as “That work can be done by Americans”, or “You must be paid in Canadian currency”. Unfortunately, there’s not much that can be done on-the-spot with such disputes. We recommend, however, that you report such incidents to CMC-Canada and we will pursue them as best we can with USCIS.

To facilitate entry under the “management consultant” category, one must have:

- A certified copy of one’s degree (i.e., educational or alternate credentials);
- Confirmation of five years’ experience in management consultancy;
- Confirmation of Canadian citizenship, preferably a Canadian passport;
- A copy of the signed contract, or letter from the firm to which services are to be provided, or from your employer attesting to the professional activity to be conducted, the anticipated duration of the job and remuneration arrangements.³
- If one has Canadian landed immigrant status one must qualify under the U.S. H-1 B immigration category. For more information please visit:
<http://uscis.gov/graphics/howdoi/h1b.htm>

If one satisfies the USCIS official at the port-of-entry as to compliance with the management consultant category, the applicant will be issued either a TN (Trade NAFTA) visa or an I-91 visa.

ESTABLISHING A BUSINESS IN THE U.S.

Persons wishing to establish a professional practice or a business in the U.S. do not qualify under the “Professional” or “Business” categories. Depending on the precise nature of one’s intentions, application under the trader or investor categories would be required.

INTRA-CORPORATE TRANSFERS

Persons transferred by their employer to a U.S. office or subsidiary for other than a specific project, also do not qualify under the business or professional categories. Application should instead be made as an intra-company transfer.

³ For the GATS, CMC-Canada is working to have the CMC certification recognized as prima facie proof that the holder is a management consultant.

NAFTA & IMMIGRATION LAW

NAFTA’s provisions do not supersede U.S. immigration law. If one is not eligible to enter the U.S. under general U.S. immigration law, NAFTA’s provisions are irrelevant. Furthermore, anyone wishing to enter the U.S. under the Business or Professional categories must satisfy any applicable state or local registration or licensing requirements.

USCIS officers are not granted any discretion in their enforcement of U.S. immigration law. They are given considerable leeway in interpretation of eligibility for entry under the business and professional categories, however, because of the increase in illegal migration from or through Canada, USCIS officials have legitimate reasons to exercise caution.

Accordingly, one must expect to have to establish to USCIS officials’ satisfaction one’s legal status in Canada, that one has no intention to reside indefinitely in the U.S., nor that one has any intention to work in areas other than those covered in one’s contract.

LIABILITY INSURANCE

One should check one’s professional liability insurance before doing work in the U.S. to ensure it has extra-territorial coverage and to understand any restrictions that may apply to that coverage. LMS ProLink is our association’s preferred Professional Liability Insurance provider. They can be contacted at 1-800-663-6828 for more information.

FREQUENT ENTRY PROGRAMS

Increasing business traffic between Canada and the U.S. has led both countries to set up programs to expedite business travellers immigration and customs clearances.

NEXUS <http://www.cbsa-asfc.gc.ca/prog/nexus>

Global Entry <http://www.globalentry.gov>

NEXUS is designed to expedite the border clearance process for low-risk, pre-approved travellers into Canada and the United States. It is a joint venture of the Canada Border Services Agency (CBSA) and U.S. Customs and Border Protection (CBP) to simplify border crossing for members while enhancing security. It allows frequent business travelers to the U.S. to avoid long line-ups for clearance at U.S. ports-of-entry.

Only Canadian citizens with clear criminal and security records are eligible to apply. Persons may apply for an NEXUS card (Application Form I-823) by calling:

Phone number	Region	Hours of operation
866-399-5887	Quebec and Atlantic residents	Monday to Friday, 8 a.m. to 4 p.m. EST (except holidays)
800-842-7647	Ontario and United States residents	Monday to Friday, 8:30 a.m. to

Updated March 2013

Phone number	Region	Hours of operation
		4:30 p.m. EST
866-496-3987	British Columbia, Alberta, Saskatchewan and Manitoba residents	Monday to Friday, 8 a.m. to 4 p.m. PST

or, by visiting the above noted website. Submission of documents, as indicated, and an in-person interview are required for a NEXUS card to be issued.

Global Entry is a U.S. CBP program that allows expedited clearance for pre-approved, low-risk travelers upon arrival in the United States. NEXUS is part of the Global Entry program.

The NEXUS card issued gives the holder access to expedited border clearance processing at airports, land crossings and marine inspection points.

At land crossings, there are special lanes for NEXUS card holders.

At airports entering Canada, NEXUS card holders use a self-serve kiosk, similar to an ATM. Going into the US, NEXUS card holders are allowed to use the automated Global Entry kiosks for entry at participating airports (including those at pre-clearance. Both systems authenticate the holder's identity through biometric imagery.

Average processing time with a valid NEXUS card is greatly reduced.

Not all U.S. ports-of-entry have Global Entry or NEXUS capability. At this time the international airports in Toronto and Vancouver are INSPASS-ready.

The Government of Canada continues to recommend that Canadian citizens carry a valid Canadian passport for all visits abroad, including visits to the United States. A passport is the only universally-accepted identification document, and it proves that you have a right to return to Canada.