

Filing for a USMCA Work Permit at the U.S. Border: What to Expect



By Eileen M. Martin

August 9, 2022 | **IMMIGRATION**

Many border restrictions have been lifted for travelers entering the U.S. from Canada. Throughout the pandemic, U.S. Customs and Border Protection (USCBP) officers continued to adjudicate petitions and applications under the United States Mexico Canada Agreement (USMCA, formerly NAFTA), as admission to the U.S. for those on work permits was always considered essential.

TN status (nonimmigrant classification) continues to be the easiest, quickest and cheapest work status for Canadians who qualify. There are 63 enumerated professions, the vast majority of which require a college or university degree in an area related to the profession. The permits carry a minimal filing fee of US\$50 and qualify the worker for a work permit for up to three years at a time.

The other work permit that exists in U.S. immigration law for citizens of all port of entry (in certain instances), is the L-1 Intracompany Transfer. L-1 status is available to a worker who has worked full-time, continuously in an executive, managerial or specialized knowledge capacity for one out of the most recent three years for an affiliate of a U.S. business, and is entering to take on an executive, managerial or specialized knowledge role in the U.S. This qualifying work must have been completed outside the U.S., and any days spent in the U.S. does not count towards the one-year requirement.

The advantage of filing at a port of entry cannot be overstated. The beneficiary gets a decision on the spot, while the same petition mailed to U.S. Citizenship and Immigration Services for a decision will cost an extra US\$2,500 to speed a response in 15 days. Further, the benefit of filing in person where an officer can question and assess the beneficiary personally generally results in a smoother process than having a large stack of documents forwarded to a remote office, where officers like to issue Requests for (additional) Evidence that slow the process.

There have been some minor but important changes at ports of entry during the pandemic that affect the adjudication of port of entry filings.

One change at some land border locations is the requirement of an appointment. Many years ago, it was possible at some U.S. ports of entry to make an appointment, to alert the Free Trade Officer (FTO) on duty what to expect. The FTO could advise if he would be present, or if there was a better day or time for the applicant/beneficiary to plan to arrive. In the 15 years since this process ended and before the pandemic, it was a first come, first-served approach at all ports of entry.

Ostensibly as a COVID-19 precaution, some ports of entry have recently gone to an appointment system. Popular or busy ports are backed up a month. While ports with less traffic may be willing to adjudicate unscheduled filings, busier ports of entry refuse. This is a particular challenge for work permit holders who have filed applications repeatedly at ports of entry in the past, and who have no advance notice of this change.

Another challenge is the filing of original wet signatures and supporting documents. This requirement has been inconsistently applied over the years. Confusion has increased since USCIBP's sister agency, U.S. Citizenship and Immigration Services (USCIS) began permitting filings with reproduced signatures, starting in March 2020, making life with COVID-19 easier - a policy that has now been extended permanently. Even though work permit petitions can be filed with either agency, USCIS will accept a copy of a signature, and USCIBP often will not.

Similarly, with supporting documents, USCIS always accepts copies of supporting documents. Sometimes USCIBP does, sometimes USCIBP does not. This varies according to officers, days of the week, ports, and any other relevant or irrelevant factors one can consider. As a result, it is always recommended for USCIBP filings to include original documents and documents with original signatures, just in case.

USCIBP continues to heavily scrutinize the TN Professional classifications of Management Consultant, Scientific Technician/Technologist, Accountant and Economist. Additionally, we have seen an increased checklist approach applied to L-1 Intracompany Transfers. There is less attention to the regulations and specific requirements than there is attention to whether the USCIBP officer can check everything off the

USCIBP list. Travelers who do not have average documents based on typical situations often find navigating the filing process more challenging, as they may lack the CBP checklist documents even though alternative documents

may very well meet the evidentiary standard. Complicating this, CBP has refused to release its checklist to the public, making it difficult to know what is on their list at any given time.

Filing for a work permit with USCBP at a port of entry affords a traveler with an immediate answer, which is often a sufficient reason to navigate the sometimes challenging and unpredictable process it requires. But petitioners must be prepared for the unpredictability that shifting adjudication policies and discretionary decision-making capabilities can throw into the process.

Eileen Martin is the immigration practice team leader at Lippes Mathias LLP. She has more than 20 years of experience in immigration law assisting clients from around the world with various matters, including work permits, employment-based immigration, port-of-entry issues, visa issuance, family-based immigration, immigrant and non-immigrant waivers and assessment of U.S. citizenship.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of the author's firm, its clients, The Lawyer's Daily, LexisNexis Canada, or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

This article was originally published by The Lawyer's Daily (www.thelawyersdaily.ca), part of LexisNexis Canada Inc.

Related Team



Eileen M. Martin
Partner | Team Co-
Leader - Immigration
| Team Leader -
Canada-U.S. Cross
Border



**Nisha V. Fontaine
(Jagtiani)**
Partner



Elizabeth M. Klarin
Partner



Andrew M. Wilson
Partner | Team Co-
Leader - Immigration

Disclaimer: *The information in this post is provided for general informational purposes only, and may not reflect the current law in your jurisdiction. No information contained in this post should be construed as legal advice from our firm or the individual author, nor is it intended to be a substitute for legal counsel on any subject matter. No reader of this post should act or refrain from acting on the basis of any information included in, or accessible through, this post without seeking the appropriate legal or other professional advice on the particular facts and circumstances at issue from a lawyer licensed in the recipient's state, country or other appropriate licensing jurisdiction.*