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GRASMICK'S BORDER REPORT:
U.S. Immigration for Canadian Businesses and Professionals
January 19, 2012

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"You cleared up 2 misconceptions generally held as truths: Canadians
1) must spend 6 months out of the States before returning, and 2) can
spend only 180 days in the States per year."
--Canadian snowbird, 1/12

"The TN Handbook is VERY useful! And I have already purchased two
teleconsults with more to come."
-Texas immigration lawyer, 1/12

"Thanks for the video "Overview of TN Work Permits!"
[<http://tinyurl.com/TNOverviewVideo>] Although I own your manual and
did a phone consult, the narrative highlights issues still not clear to
me."
-Part-time IT consultant, 1/12

1. NEW BORDER L-1 PROCEDURES

CBP just released new standards for L-1 intra-company transferee
petitions for Canadians. The NAFTA border standards are about burden
of proof, package completeness, and petition review. The memo also
explains how Customs and Border Protection (CBP) is to submit the
petition to the US Citizenship and Immigration Service (USCIS),
including our new ability to provide prepaid mailers to CBP for
delivery to USCIS.

This is important to L-1 Canadians. I therefore provide the full text,
expeditiously:

"CBP Standards for Accepting and Adjudicating I-129 Petitions for L-1
Intracompany Transferee Petitions for Canadian Citizens under the North
American Free Trade Agreement (NAFTA)

January 3, 2012

1. The burden of proof for establishing eligibility rests with both the
petitioner who is filing the petition; and the beneficiary, who is
applying for admission.
2. CBP will review an I-129 petition submitted for an L-1 applicant to
ensure the application is complete.
 - a. Two copies of the I-129 with original signatures on each copy.

b. Supporting documentation is included with the I-129 petition to establish the petitioner and beneficiary are demonstrating that the petitioner and beneficiary meet the requirements for the L-1 class of admission are:

i. Qualifying entity:

--The applicant is coming to work for an entity in the U.S. that is the parent, branch, affiliate, or subsidiary of the entity in the foreign country.

ii. Qualifying capacity:

--Executive or Managerial.

--Specialized Knowledge.

iii. Qualifying past employment:

--An alien who within the preceding three years has been employed abroad for one continuous year.

iv. Qualifying citizenship - the applicant is a citizen of Canada.

3. CBP will review the I-129 petition in accordance with 8 CFR 214.2(1)(17)(iv):

a. If a petition or certificate of eligibility submitted concurrently with an application for admission is lacking necessary supporting documentation or is otherwise deficient, the inspecting CBP officer shall return the I-129 petition to the applicant for admission in order to obtain the necessary documentation from the petitioner or for the deficiency to be overcome.

b. The fee to file the petition will be remitted at such time as the documentary or other deficiency is overcome.

c. If the petition or certificate of eligibility is clearly deniable, the CBP officer will accept the petition (with fee) and the petitioner shall be notified of the denial, the reasons for denial, and the right of appeal.

d. If a formal denial order cannot be issued by the port of entry, the petition with a recommendation for denial shall be forwarded to the appropriate U.S. Citizenship and Immigration Services (USCIS) Service Center for final action.

4. To ensure prompt processing by USCIS, including creating a Form I-797, Notice of Action confirming the adjudication result (e.g. approval of the L-1 classification and the dates of validity); sending the Form I-797 to the petitioner; and entry by USCIS into the Department of State's Petition Information Management System (PIMS) to facilitate the issuance of L-2 (dependent of L-1) nonimmigrant visas for non-citizens of Canada, the completed I-129 petition package must be mailed by CBP to the USCIS Service Center after the petition has been adjudicated by CBP.

a. CBP will permit petitioners to prepare and CBP will accept a prepaid Express Mail Flat Rate Envelope submitted with the L-1 petition and an application for admission.

b. The prepaid mailer must to be addressed to either the USCIS California Service Center or the USCIS Vermont Service Center, depending on the location where the beneficiary will work.

c. The addresses (current as of August 2011) are listed on the below and updated information is available at www.uscis.gov . I-129 petition packages that are incorrectly addressed or without proper postage will not be accepted.

If you are the petitioning employer and the beneficiary will work temporarily in:

AK, AZ, CA, CO, GU, HI, ID,
IL, IN, IA, KS, MI, MN, MO,
MP, MT, NE, NV, ND, OH,
OR, SD, UT, WA, WI, or WY

Courier Address for All I-129s:

USCIS
California Service Center
ATTN: I-129 L
24000 Avila Road
2nd Floor, Room 2312
Laguna Niguel, CA 92677

(Please note the type of I-129 in the attention line)

The beneficiary will work temporarily in:

AL, AR, CT, DE, DC, FL, GA,
KY, LA, ME, MD, MA, MS, NH,
NJ, NM, NY, NC, OK, PA, PR,
RI, SC, TN, TX, VT, VA, VI, or
WV:

USCIS
Vermont Service Center
ATTN: I-129
75 Lower Welden Street
St. Albans, VT 05479-0001

For more information, you may also visit the USCIS.gov or State.gov websites."

2. IN PRAISE OF 2 OR 3 PASSPORTS

For a philosophical look at dual citizenship, see the new Economist article "In praise of a second (or third) passport: Multiple identities are natural. Citizenship laws should catch up":

"Seen from the state's point of view, multiple citizenship is at best untidy and at worst a menace. Officials would prefer you to be born, live, work, pay taxes, draw benefits and die in the same place, travel on one passport only, and bequeath only one nationality to your offspring. In wartime the state has a unique call on your loyalty--and perhaps your life. Citizenship is the glue keeping individual and state together. Tamper with it, and the relationship comes unstuck. But life is more complicated than that. . ."

Read the article at <http://www.economist.com/node/21542413>

By the way, the best source for legal fundamentals about dual Canadian/U.S. citizenship is at:

<http://www.grasmick.com/citizen.htm#ADVANTAGES OF>

3. AVOIDABLE HORROR STORY

Almost every border mess I encounter is avoidable if travelers were to read this Border Report. Here is one I heard about a few days ago:

"FYI, a friend works in the US using a TN. He travels frequently. CBP lists him as "scientific technician" (computer software engineering), but when he tried to get back into the US (via Toronto), the inspector stopped him. He really is a sci. tech, but one of his roles is conference speaker. It consumes a tiny percentage of his time, but the border officer "Googled" him and saw a conference bio with a title as something other than "engineering technician." After 5 hours of polite but relentless discussion, they let him pass. The experience rattled him and now he is planning to quit that job and move back to Canada. Moral: It's not just about getting the letter right; you also must be careful of your public persona."

Past Border Report articles warn against complacency, urge you to check out your (and your employer's) Internet persona before crossing the border, and discuss the role of trainers and speakers as TN professionals. Take a few minutes to read this each month . . . and avoid 5 hours of painful interrogation and computer flags.

You can also spread the word. Cut and paste the following text into your LinkedIn, Facebook, Twitter or message boards. Professionals serving cross-border clients can put the following passage in their own newsletters. (Nobody is happier than a client whose "skin is saved" by his professional advisor!) Customize, as you like:

===== [cut below here] =====

Have you heard of Grasmick's Border Report? It is the preeminent news source about Canada to U.S. immigration. You can get a free subscription.

Send a message to jgrasmick-subscribe@yahoogroups.com

===== [cut above here] =====

I thank you. Your fellow travelers, associates and clients will thank you.

4. TN NOT NECESSARILY FOR 3 YEARS

A committee of the American Immigration Lawyers Association summarizes the current CBP practice to limit the TN NAFTA permit's period of validity, to the Canadian's passport validity. Here is an edited version of that advice:

AILA/CBP Liaison Committee Practice Pointer:

TN Admissions for Citizens of Canada

Background

The North American Free Trade Agreement (NAFTA) allows certain Canadian and Mexican professionals to qualify for TN nonimmigrant classification to provide professional services in the U.S.

A Canadian may apply for TN classification and admission at any U.S. "Class A" port-of-entry, a U.S. airport handling international traffic, or a U.S. pre-clearance/pre-flight station. The applicant does not have to first get a TN passport visa at a U.S. Consulate.

The appropriate admission period:

CBP may admit a Canadian into the U.S. in TN status for up to three years, if the passport will remain valid throughout this period.

The period of admission for citizens of Canada should be for the full period of intended employment, up to three years. Applicants should indicate that period in a statement signed by the prospective employer.

Examples illustrating appropriate periods:

Example #1: A Canadian may present a letter from the prospective employer confirming that the intended period of employment will be for three years. CBP may admit him or her for three years, if the passport will be valid throughout this period.

Example #2: A Canadian may present a letter from the prospective employer confirming that the intended period of employment will be for a period of eighteen months. He or she may be admitted for eighteen months consistent with the intended period of employment, if the passport will be valid throughout this period."

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I offer this privately circulated e-mail to:

- my clients;
- U.S. employers hiring Canadians;
- Canadians working or conducting business in the U.S.; and
- professionals, such as lawyers and accountants, serving these people.

This "required reading" for my clients reveals in plain English what is happening at the border now. It does not just repeat the law. The information is simple and easy to follow, with plain text, minimal markup and no pictures.

Here you will find stories not reported in the media. Of course, it is not legal advice; I only become your lawyer once you retain me in writing: <http://www.grasmick.com/hireus.htm>

For questions or comments or to share border experiences, write me at jgrasmick@grasmick.com . Kindly put "Border Report" in the subject line so I can prioritize your message.

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