



Blaneys on Immigration

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This newsletter is designed to highlight new issues of importance in immigration related law. We hope you will find it interesting, and welcome your comments.

Feel free to contact any of the lawyers who wrote or are quoted in these articles for more information, or call the head of our Immigration Law Group, Ian Epstein at 416.593.3915 or iepstein@blaney.com.

“United States Customs and Border Protection ... announced ... it would begin optimizing processing for first-time Canadian TN and L-1 applicants seeking entry into the United States under the North American Free Trade Agreement...”

UNITED STATES CUSTOMS AND BORDER PROTECTION DESIGNATES PORTS OF ENTRY FOR OPTIMIZED PROCESSING OF TN AND L-1 STATUS

Henry J. Chang

United States Customs and Border Protection (“USCBP”) recently announced on its website that, sometime during September 2014, it would begin optimizing processing for first-time Canadian TN and L-1 applicants seeking entry into the United States under the *North American Free Trade Agreement* (the “NAFTA”). TN status (also known as “Trade NAFTA” status) is available to Canadian citizens working in one of the designated professions described in Appendix 1603.D.1 to Annex 1603 of the NAFTA. L-1 status is available to executives, managers, and specialized knowledge workers, who are transferring to a United States company from a related foreign company.

The USCBP website states that, in connection with this initiative, it has designated fourteen ports of entry (including four preclearance locations) that will offer a more efficient approach to processing a high volume of TN and L-1 applicants. Of course, TN and L-1 applicants may continue to apply at any port of entry along the Canadian border for processing. However, they are encouraged to apply at one of the designated ports of entry where they will receive “optimized processing.”

The fourteen ports of entry that have been designated for optimized processing are as follows:

1. Lester B. Pearson International Airport; P.O. Box 115; Toronto AMF; Toronto, Ontario; L5P 1A2 (Hours of Operation: 4:30 a.m. - 9:00 p.m. Daily)
2. Trudeau International Airport; 975 Romeo Vachon Boulevard, North; Room TT 2.400; Dorval, Quebec; H4Y 1H1 (Hours of Operation: 4:30 a.m. - 8:00 p.m. Daily)
3. Vancouver International Airport; International Terminal – Level 3; 3161 Grant McConachie Way; Richmond, British Columbia; V7B 0A4 (Hours of Operation: 4:30 a.m. - 8:30 p.m. Daily)
4. Calgary International Airport; P.O. Box 155; 2000 Airport Road, Northeast; Calgary, Alberta; T2E 6W5 (Hours of Operation: 4:30 a.m. - 8:00 p.m. Daily)
5. Highgate Springs Port of Entry; Interstate 89 at the Border; Highgate Springs, VT; 05460; (Hours of Operation: 8:00 a.m. - 4:00 p.m. Monday through Thursday)
6. Derby Line Port of Entry; Interstate 91; Derby Line, VT; 05830; (Hours of Operation: 9:00 a.m. - 3:00 p.m. Tuesday through Thursday)
7. Alexandria Bay Port of Entry; 46735 Interstate 81; Alexandria Bay, NY; 13607

“First time TN applicants who are not sure where to apply might consider seeking TN status from [United States Citizenship and Immigration Services] prior to their application for admission.”



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8. Peace Bridge Port of Entry; One Peace Bridge Plaza; Buffalo, NY; 14213
9. Rainbow Bridge Port of Entry; One Rainbow Bridge; Niagara Falls, NY; 14330
10. Champlain Port of Entry; 237 West Service Road; Champlain, NY; 12919 (Hours of Operation: 8:00 a.m. - 4:00 p.m. Monday through Friday)
11. Detroit Canada Tunnel Port of Entry; 150 E. Jefferson; Detroit, MI 48226
12. Detroit Ambassador Bridge Port of Entry; 3033 Porter Street; Detroit, MI; 48216 (Hours of Operation: 8:00 a.m. - 4:00 p.m. Monday through Friday)
13. Blaine Peace Arch Port of Entry; 123 Second Street; Blaine, WA; 98230 (Hours of Operation: 8:00 a.m. - 4:00 p.m. Tuesday through Thursday)
14. Sweetgrass Port of Entry; 39825 Interstate 15; Sweetgrass, MT; 59484 (Hours of Operation: 10:00 a.m. - 6:00 p.m. Monday through Friday)

This sounds good in theory. However, while some of these designated ports of entry are quite reasonable, others are notoriously difficult when adjudicating TN and L-1 cases.

It is also too early to know what form of “optimized processing” will be implemented at these designated ports of entry. Many years ago, each port of entry had a Free Trade Officer who was solely responsible for adjudicating TN and L-1 applications at that location but they were eventually phased out. It is uncertain whether this “optimized processing” will involve the appointment of a Free Trade Officer at each port of

entry again. When Free Trade Officers were in place, TN and L-1 adjudications were not necessarily better or faster but there was at least some consistency among cases filed at the same port of entry.

Canadian citizens seeking TN or L-1 status at the time of admission should not assume that their application will be adjudicated in a reasonable manner merely because they apply at one of these fourteen designated locations. It is essential that an applicant be aware of the reputation of a particular port of entry before seeking TN or L-1 status there.

Of course, United States Citizenship and Immigration Services (“USCIS”) has been accepting first time TN petitions filed on behalf of Canadian citizens who are outside the United States since October 1, 2012. Prior to this date, USCIS only accepted TN petitions where the applicant was already in the United States and extending his or her existing TN status or changing to TN from another status.

First time TN applicants who are not sure where to apply might consider seeking TN status from USCIS prior to their application for admission. Based on anecdotal evidence, USCIS appears to be adjudicating TN applications in a reasonable manner. The filing fee is higher and it takes much longer to adjudicate a TN through USCIS but at least an applicant will know that he or she has been approved prior to appearing at the port of entry.

USCIS also adjudicates L-1 petitions, in particular those filed on behalf of non-Canadian applicants. The ability of a Canadian citizen to submit

an L-1 petition at a port of entry along the Canada-U.S. border or at a preclearance facility at a Canadian airport has always been an exception to the general rule. As a result, Canadian citizens are still free to file their L-1 petitions with UCSIS. However, given the fact that USCIS is much stricter than USCBP when adjudicating L-1 petitions, it is rarely advisable for a Canadian to apply in this manner.

In conclusion, it is unlikely that this USCBP initiative will significantly alter the way that TN and L-1 cases are adjudicated. Applicants who retain qualified lawyers experienced in border adjudications will continue to benefit from the insight that such lawyers possess, including (among other things) knowing the best port of entry to submit such cases. ■

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