

A Review of NEXUS Program Eligibility

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Introduction

The NEXUS program is a joint initiative of United States Customs and Border Protection (“USCBP”) and the Canada Border Services Agency (“CBSA”), which allows pre-approved, low-risk travellers to receive expedited entry when travelling to the United States or Canada. In addition, under the Western Hemisphere Travel Initiative, NEXUS cards are approved for use by United States and Canadian citizens as an alternative to passports for air, land, and sea travel into the United States.

The NEXUS program is also being integrated into USCBP’s Global Entry program, a similar trusted traveller program that is available to: (1) U.S. citizens, (2) U.S. lawful permanent residents, (3) Dutch citizens, (4) South Korean citizens, and (5) Mexican nationals. This integration began in December 2010, when USCBP first published a Federal Register Notice announcing that NEXUS members could participate in the Global Entry program using their NEXUS cards.

Unfortunately, not everyone will be in a position to satisfy the NEXUS eligibility criteria. A brief discussion of the relevant criteria appears below.

Eligibility Criteria

UNITED STATES

As NEXUS is a joint program, an applicant must be approved by both USCBP and CBSA. The denial of an application by either country will prevent an individual from participating in the NEXUS program.

There are no formal regulations that implement the NEXUS program in the United States. However, according to the USCBP website, applicants will not qualify for NEXUS if they:

- Are inadmissible to the United States or Canada under applicable immigration laws;
- Provide false or incomplete information on their application;
- Have been convicted of a criminal offense in any country;
- Have been found in violation of customs, agriculture, or immigration law; or
- Fail to meet other requirements of the NEXUS program.

The above guidance is very limited. However, as USCBP is in the process of integrating NEXUS into its Global Entry program, it would be helpful to consider the implementing regulations of that program.

According to 8 CFR §235.12(b)(2), an individual is ineligible to participate in Global Entry if USCBP, at its sole discretion, determines that the individual presents a potential risk for terrorism, criminality (such as smuggling), or is otherwise not a low-risk traveler. This risk determination will be based in part upon an applicant's ability to demonstrate past compliance with laws, regulations, and policies. Reasons why an applicant may not qualify for participation include:

- The applicant provides false or incomplete information on the application;
- The applicant has been arrested for, or convicted of, any criminal offense or has pending criminal charges or outstanding warrants in any country;
- The applicant has been found in violation of any customs, immigration, or agriculture regulations, procedures, or laws in any country;
- The applicant is the subject of an investigation by any federal, state, or local law enforcement agency in any country;
- The applicant is inadmissible to the United States under applicable immigration laws or has, at any time, been granted a waiver of inadmissibility or parole;
- The applicant is known or suspected of being or having been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism; or
- The applicant cannot satisfy USCBP of his or her low-risk status or meet other program requirements.

CANADA

In Canada, the NEXUS eligibility criteria are described in the *Presentation of Persons (2003) Regulations* (SOR/2003-323). According to these regulations, an applicant may seek enrollment under NEXUS if he or she:

- Is a permanent resident, within the meaning of the *Immigration and Refugee Protection Act*, a Canadian citizen, or a citizen or permanent resident of the United States;
- Is of good character;
- Is not inadmissible to Canada under the *Immigration and Refugee Protection Act* or its regulations;
- Provides their consent in writing to the use of biometric data for the purposes of the program; and
- Has provided true, accurate and complete information in respect of their application for the authorization.

The language contained in the above regulations is also quite vague. For example, it does not explain when “good character” will be found to exist.

The CBSA website provides only slightly more detailed guidance. It states that applicants will not qualify if they:

- Are inadmissible to Canada or the United States under applicable immigration laws;
- Intentionally provide false or incomplete information on your application;
- Have been convicted of a serious criminal offence in any country for which they have not received a pardon (now known as a “record suspension”);
- Have a recorded violation of customs, immigration or agriculture law; or
- Fail to meet other requirements of NEXUS.

Conclusion

CBSA’s eligibility criteria appear to be more lenient than those applied by USCBP. For example, an applicant who was pardoned for a prior criminal offense could be approved by CBSA but still be denied by USCBP, since the latter does not recognize pardons. In addition, USCBP appears to disqualify applicants who have been arrested (but not convicted) and those who have charges pending.

In any event, since NEXUS applicants must be approved by both USCBP and CBSA, the stricter eligibility criteria applied by USCBP will typically prevail. This means that NEXUS applicants will likely be required to comply with the stricter eligibility criteria that USCBP applies in Global Entry applications.

Although NEXUS offers tangible benefits to frequent travellers, potential applicants must carefully consider their eligibility under both USCBP and CBSA criteria prior to submitting their NEXUS applications.