

Business Immigration

Every year, Canadian employers seek to address labour and skill shortages through the temporary recruitment and relocation of skilled workers from abroad. On the surface it would seem that this type of recruiting offers employers a simple and valuable opportunity to get the job done. However, bringing a temporary foreign worker to Canada is not without risk. If not undertaken properly, the foreign worker may face unnecessary delays in entering Canada or be denied the opportunity to work in Canada altogether. It is, therefore, important that employers fully familiarize themselves with the Canadian immigration process to avoid impairing the plans and operations of their business. The temporary relocation of foreign workers to Canada may be accomplished in a number of ways. Below, we outline, in general terms, several of the immigration categories under which foreign workers commonly seek entry into Canada.

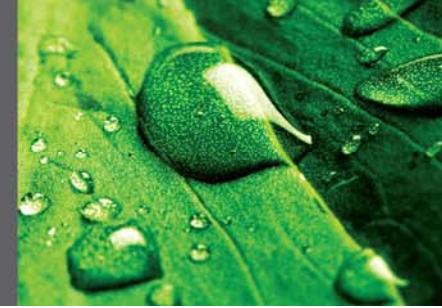
1. THE LABOUR MARKET OPINION

As a general rule, no person, other than a Canadian citizen or permanent resident, may work in Canada without a valid work permit. Unless an exemption is available, bringing a foreign worker into Canada consists of a two-step process. The Canadian employer must first offer the foreign worker a job. Service Canada must provide the employer with a positive “labour market opinion” (LMO), which is a confirmation that the foreign national may fill the position as the employer has satisfied Service Canada that no Canadian worker is available and qualified to do the job. When applying for such validation, the Canadian employer must demonstrate that they have made an extensive effort to recruit an employee from the local labour market for the position but could not find a suitable candidate, as well as ensure that the foreign worker’s wages and working conditions are commensurate with Canadian standards.

In order to save time and costs, employers engaged in major business projects which entail the prolonged and extensive recruitment of foreign workers have the option of submitting a single application to Service Canada in order to obtain a pre-approval to fill multiple positions in the same occupation. Once a positive LMO pre-approval has been issued, the employer may proceed with its recruitment of individual foreign workers. The issuance of a full LMO confirmation for each foreign worker will then be a mere formality once the particulars (name, date of birth etc.) for each individual are provided to Service Canada.

2. THE WORK PERMIT

Once a positive LMO has been issued, the foreign worker must apply for and obtain a work permit from Citizenship and Immigration Canada (CIC). Foreign workers who do not require a temporary resident visa for Canada may apply for a work permit upon their arrival at a Canadian port of entry (such as Pearson International Airport in Toronto). Foreign workers from countries that require a visa to enter Canada must apply for their work permits at the Canadian embassy or consular office servicing the



foreign worker's country of residence. Generally speaking and depending on the application, it should be noted that work permits are issued for periods ranging from 1 to 3 years, and may be renewed, although not automatically.

3. INTRA-COMPANY TRANSFEREES

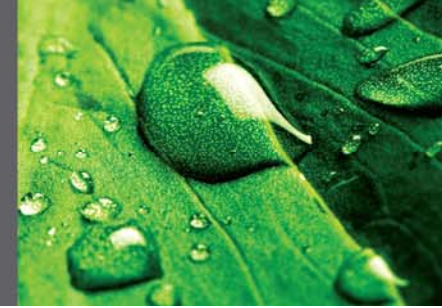
The Intra-Company Transferee category offers one of the most convenient and efficient methods for multinational companies to temporarily relocate their workers to Canada without first obtaining an LMO. Employers often seek to make use of this exemption in order to avoid the often difficult, costly and time consuming process associated with obtaining an LMO.

In order to qualify as an Intra-Company Transferee, the foreign worker must have been employed with the parent, branch, subsidiary or affiliate of the Canadian company in an senior executive or managerial position, or in a position requiring specialized knowledge, and must be coming to Canada to work in one of those three capacities. The foreign worker must also have been employed with the foreign entity on a full-time basis for a period of no less than one year within the three-year period immediately preceding the date of application. It is worth noting that to qualify as an individual with specialized knowledge requires a demonstration that the foreign worker possesses advanced level knowledge of a company's products or services (including research, equipment, techniques and management) or expertise in the organization's processes or procedures.

Intra-Company Transferees may apply for a work permit at a Canadian port of entry if they do not require a temporary resident visa for Canada. Intra-Company Transferees from countries that require a visa to enter Canada must apply for their work permit at the Canadian embassy or consular's office servicing their country of residence. Generally speaking, work permits are issued for periods ranging from 1 to 3 years, and may be extended, although not automatically, to a maximum of seven years for senior executives/managers and five years for individuals with specialized knowledge.

4. SPOUSAL WORK PERMITS

The spouse (or common law partner) of an Intra-Company Transferee may be eligible to apply for a work permit without the need for a LMO where the Intra-Company Transferee is authorized to work in Canada for at least six months and qualifies as a skilled worker in accordance with the National Occupational Classification. If these requirements are met, the spouse may apply for an open work permit, which allows that individual to work in any occupation in Canada provided they pass an immigration medical examination. The spouse's work permit will then expire when the Intra-Company Transferee's work permit expires.



5. BUSINESS VISITORS: WORK PERMIT EXEMPT

In special situations, foreign workers may enter Canada to engage in work without holding a work permit and without the need for a LMO confirmation. One such exemption is that of the business visitor, which allows a foreign national to engage in international business activity in Canada for a period of up to six months. In order to qualify under this exemption, the business visitor must not have the intention of entering the Canadian labour market; that is, the foreign worker must not have the intention of being gainfully employed in Canada. In addition, the primary source of remuneration for the foreign worker's business activities, as well the principal place of business and actual place of accrual of profits, must remain predominately outside of Canada.

Business visitors may engage in a number of permissible activities, including: attending business meetings and conferences; providing after-sales service; supervising the installation of specialized merchandise purchased or leased outside of Canada; providing familiarization or training services to prospective users and sales persons for goods and services manufactured and developed outside of Canada; and providing or receiving training at the Canadian subsidiary of the company that employs the business visitor outside of Canada, as long as any production of goods or services resulting from the training is incidental.

6. BUSINESS VISITORS - AFTER-SALES SERVICE

After-sales services is the area where a person may enter as a business visitor to provide repair and servicing, supervising installers and setting up and testing commercial or industrial equipment (including computer software). It does not include operating the equipment or machinery, or computer software of production and excludes hand-on building and construction work. This category applies to persons seeking entry to Canada to repair or service specialized equipment, purchased or leased outside Canada, provided the service is being performed as part of the original or extended sales agreement, lease agreement, warranty, or service contract.

To be covered by the business visitor exemption, service contracts must have been negotiated as a part of the original sales or lease agreements or be an extension to the original agreement. Service contracts negotiated with third parties after the signing of the sales or lease agreement are not covered by the business visitor exemption. If, however, the original sales agreement indicates that a third company has been or will be contracted to service the equipment, then the business visitor exemption applies.

All visitors entering Canada to perform after-sales service for work periods of longer than 2 days are documented on a visitor record. In order to facilitate the entry of foreign national as a business visitor into Canada, Citizenship and Immigration Canada requires that the foreign worker have in their possession upon arrival at a Canadian port of entry a copy of the sales agreement or lease agreement between the employer of the foreign worker and the Canadian company or the parent company of the Canadian subsidiary. If the agreement is in a language other than English or French, a certified translated



copy of the agreement should be provided to the employee for review by an immigration officer. It is important that there is clear wording in the agreement which sets out the goods and services to be provided, the location and the name of the Canadian company to whom the goods and/or services are to be provided and the nature of the after-sales services to be performed in Canada.

7. THE NORTH AMERICAN FREE TRADE AGREEMENT (“NAFTA”)

Under the NAFTA, citizens the United States and Mexico can gain quicker, easier temporary entry into Canada to conduct business or investment activities. In addition to facilitating quicker entry into Canada than most temporary resident immigration categories, applicants under the NAFTA are not required to obtain an LMO. The benefit to Canadian employers is that they do not have to have a job offer approved by Service Canada to employ an American or a Mexican employee. However, business persons covered under the NAFTA must still comply with the general provisions governing temporary entry to Canada.

The following list outlines some of the advantages afforded to business persons applying for temporary status in Canada under the NAFTA:

- The NAFTA facilitates temporary entry for business persons who are citizens of the United States and Mexico who are involved in the trade of goods, services or investment activities;
- The NAFTA removes the need for obtaining an LMO for all business persons covered under the Agreement;
- In the case of business visitors, it removes the need for a work permit; and
- For professionals and intra-company transferees, it expedites the application process due to the fact that applicants may apply directly at the Canadian port of entry.

Under the NAFTA there exists four (4) business related categories for entry to Canada on a temporary basis, they include: business visitors, professionals, intra-company transferees, and traders and investors. One of the most commonly used categories is that of the NAFTA professionals category.

NAFTA Professionals

NAFTA Professionals are defined as business persons who may enter Canada to provide pre-arranged professional services – either as a salaried employee of a Canadian enterprise, through a contract between the business person and a Canadian employer, or through a contract between the American or Mexican employer of the business person and a Canadian enterprise. In total the NAFTA lists more than 60 occupations covered by the Agreement. Professionals enter to provide services in the field for which they are qualified.



In order to be eligible for entry to Canada as a professional, an applicant must:

- be qualified to work in one of the more than 60 professions listed in Appendix 1603.D.1 of the NAFTA (for example, accountant, computer systems analyst, engineer, management consultant and technical publications writer); and
- have pre-arranged employment with a Canadian enterprise in an occupation that matches the qualification.

Among the 60 professions listed under 1603.D.1 of the NAFTA, the Management Consultant profession has proven to be one of the most widely-used immigration categories for companies both large and small seeking to enter into the Canadian marketplace.

Management Consultants

Management Consultants provide 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 Canadian client from a NAFTA member country (i.e. USA or Mexico). The professional services provided must be temporary, periodical or on a fixed consulting basis rather than as full-time employment. A Management Consultant will generally provide the following range of services: conduct a comprehensive examination of the client's business to isolate and define problems; prepare a presentation and report all findings to the client; and work with the client to design and implement in-depth working solutions.



8. CONCLUSION

The successful recruitment and relocation of foreign workers to Canada should be done properly to avoid impairing the plans and operations of your business. Each situation should be assessed well in advance to ensure that the most appropriate immigration strategy is adopted in light of the applicant's skill-set, the purpose of the entry and any long term goals. Dale & Lessmann LLP's Immigration Practice Group offers a specialized range of immigration and international mobility services to ensure a seamless process for businesses, employees and any accompanying family members. We provide cost-effective immigration solutions to businesses from Canada, the United States, Europe and Australia on major projects, executive transfers, and in obtaining business visitor status, work permits, temporary resident visas and permanent resident status.

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For more information, we encourage you to contact a member of our Immigration Practice Group.

Sven Walker	(416) 369-7848	swalker@dalelessmann.com
Robert Iozzo	(416) 369-7812	riozzo@dalelessmann.com
Garth Dingwall	(416) 369-7881	gdingwall@dalelessmann.com

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