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GRASMICK'S BORDER REPORT:

U.S. Immigration for Canadian Businesses and Professionals

July 15, 2011
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"Good news. I got my TN today! I would not have made it without your document review service. I am grateful."

--Ontario-based Management Consultant to the IT services industry,
6/11

"The consultation was a success. We identified the goal, route and process."

--Executive, automotive OEM supplier, 6/11

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1. SNAGGED SYSTEMS ANALYSTS

The last Border Report revealed three biggest issues folks have called about this year. Many callers are TN Systems Analysts, denied at the border, in spite of the fact that they have been crossing for years.

Reasons include

-the job description aims too low ("you are a mere programmer, not an analyst"),

-too high ("you are a manager"),

-the degree/diploma does not say "computers," or

-the diploma only represents one chronological study year.

(See May 27, 2011 "1. 2011's THREE MOST FREQUENT QUESTIONS"
<http://groups.yahoo.com/group/jgrasmick/message/44>)

IT folks, tune up your TN Systems Analyst renewal application. Study Grasmick's TN Handbook, Chapter 10 "IT Professions," pages 174-187. If you do not have the Handbook, download it immediately at <http://www.grasmick.com/handbook.htm> . At renewal time, I can even review your paperwork to increase the chance of smooth success. If you have a dubious fit, let us talk about other IT work permits.

Until then, to help employers fill critical job openings with Canadians, here is information to assist in tune-ups. (If you know

Canadian systems analysts, let them know they can subscribe to this newsletter by sending a message to jgrasmick-subscribe@yahoogroups.com
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One-Year Certificates

Systems Analysts must have at least a 2-year diploma or bachelor's degree. See TN requirements at <http://www.grasmick.com/nafta.htm#Grasmick's> . Two-year certificate programs done in one accelerated chronological year, do not qualify. I do not agree with immigration's point of view, but expect this at the border.

Programmers Not Welcome

What is the difference between a programmer and a programmer/analyst? A crucial difference: programmer/analysts--like other systems analysts--qualify for the TN. Programmers do not. Inspectors deny applications with programmer job descriptions. Programmers are then often limited to the cumbersome and unreliable H-1B. (Some programmers will not even qualify for the H-1B.)

Making this distinction is high priority for the government. This is because the border agency perceives that employers and employees have abused this classification--"many mere programmers try to come into the U.S. using a category in which they do not fit."

Start with the Dictionary of Occupational Titles (DOT) systems analyst description (<http://www.grasmick.com/dot.htm#Analyst>). Carefully track the description that matches the TN title in the employer support letter. (I can review this letter for you, if you like.) Stay away from job descriptions that do not match the TN title--in this case anything resembling DOT programmer descriptions.

Inspectors watch for the percentage of "coding" in the duties. They also observe salaries that may fall outside normal parameters of a systems analyst wage. Deviation may trigger a determination that "you are not really a systems analyst."

Must the college major be in computers?

Chapter 1 of the TN Handbook warns about weak relationships between college majors and the TN job title. Immigration requires the academics to be "in the field or in a closely related field."

This is important. Inspectors deny many TN Systems Analyst renewal applications where the degree or diploma does not clearly relate. Many unfortunate individuals who work as computer systems analysts have degrees in business, mathematics, engineering, etc., instead of degrees that read "Computer Science."

Inspectors have based these denials on new guidelines, which had not been present at the time of the first TN approvals. This creates hardship, especially acute for Canadians who have links to the U.S.,

such as homes, children in school, etc. (See "Renewals Are Not Automatic" TN Handbook Chapter 17, and "Immigration Can Turn You Away Even If You Are Approved—Keep Up With Changes in Law" Chapter 15.) It often destroys business plans, when employers find a key employee absent.

A credentials evaluation of the transcript (a statement by an American credentials evaluator that the individual possesses the appropriate academic equivalency) can make a difference.

Systems Analyst, Manager, or Both?

There is no TN category for "manager" or "supervisor." In fact, inspectors often deny TNs to people who are managers in their professions. Still, many managers and supervisors *are* successfully working as listed TNs in the U.S.

The Handbook details two ways systems analysts (and other TN professionals) can get out of this trap:

- Emphasize technical duties, not the managerial title, and
- show that your industry and the labor department consider your level of management duties consistent with systems analysis (page 212).

2. SOUTHERN PORTS AND TNs

I recently answered a question from an immigration lawyer colleague.

Question:

"My client left the U.S. while his TN Management Consultant application to TN was pending. He is now sunning himself in El Salvador. Apparently, he is flying back through Houston. I am wondering if that would be the best place to submit his TN application and about details on how long it might take."

Answer:

"This should be on the spot, secondary inspection, right at Houston airport. By the way, I do not like Southern Borders for Canadian TNs because of their lack of experience with Canadian-specific issues. Then again, other lawyers have had good luck. Perhaps you can see if an inspector with prior Customs and Border Protection (CBP) northern border NAFTA experience is stationed there when you client comes through? (They move these folks around.) The management consultant category would give me the heebie-jeebies because of the high level of scrutiny--make sure the application is bulletproof. There are also pros and cons of airport vs. land applications, including the ramifications of being turned back from a non-Canadian airport without U.S. PFI Inspection facilities."

Many Canadian TNs find themselves closer to Mexico than Canada. Southern ports can be convenient for renewals. All the same, remember-- the TN is an "entry" application. Inspectors can keep you out of the

U.S., and put you back to the country from whence you came (in this case, Mexico or El Salvador instead of Canada.) Southern border TN rules for Mexicans are different from those for Canadians (Mexican TNs are not even eligible for border service!) One reader gives an example: "The Northern border gives an I-94 stamped "Multiple Entry," and I simply show and go on later entries. The Southern border consistently removes the I-94 and issues a new one, stating that the Northern folks do not understand the process. . . taking me aside, passing through the paperwork from a to z, re-issuing the I-94 and re-stamping the passport."

If possible, use mail or a port bordering Canada. Regardless of the port, present flawless paperwork. Consult with me before writing the TN letter. (You can set up the consultation in a few minutes at <http://www.grasmick.com/consult.htm>)

3. FRAGILE NEXUS CARDS

NEXUS cards allow Canadians and Americans expedited passage at NEXUS-dedicated lanes and airport kiosks. Favored recipients cross the border with minimum questioning. Indeed, some ports are "Nexus only" now.

Do not lose that privilege. Your NEXUS card can and will be lifted---often permanently---after the slightest violation. Callers and clients have discovered that Nexus is only a card, not a "status." It does *not* allow people into the U.S. without the proper immigration or work authorization. It is *not* a permit in and of itself. If you need a TN, you still need a TN. If you need to comply with visitor restrictions, these do not go away with NEXUS.

Roving inspectors and random audits shadow NEXUS entries. Do not lose trusted traveller status. Make sure each entry is OK.

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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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