

Tapping U.S. Employees To Work In An Untapped Canadian Market

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Your company just signed a lucrative contract to start a project in Canada next week. Your company, however, does not have operations in Canada. Moreover, the only employees qualified to perform the work are U.S. citizen employees currently working in the U.S. What do you do?

Most employers do not contemplate the immigration issues surrounding a scenario like the one listed above until after the contract is signed and the work is imminent. The North America Free Trade Agreement (“NAFTA”) provides a solution for swiftly tapping U.S. citizen employees to work in Canada.

Under NAFTA, a U.S. citizen employee can present an Application for Canadian Work Permit at the port of entry into Canada if the following requirements are met:

- The employee is a citizen of the United States;
- The employee works in a profession identified in [Appendix 1603.D.1](#) of NAFTA ;
- The employee qualifies to work in that profession (most of the NAFTA professions require at least a bachelor’s degree);
- There is pre-arranged work with a Canadian employer; and
- The employment will be temporary.

A U.S. citizen employee must present the following documentation at the port of entry:

- A U.S. passport;
- A completed Application For Canadian Work Permit form;
- A letter of invitation from the Canadian client and a copy of the contract;
- A letter of support from the U.S. employer providing information regarding the proposed employer in Canada, the profession for which entry is sought, details of the position (title, duties, duration of employment, arrangements

- as to payment, and the educational qualifications or alternative credentials required for the position);
- Evidence that the employee has at least the minimum education requirements or alternative credentials listed in Appendix 1603.D.1 (copies of degrees, diplomas, transcripts, professional licenses, accreditation or registration, etc.); and
- Evidence of the employee's ties to the U.S. to show that the position in Canada is temporary.

Citizenship and Immigration Canada typically grants initial work permits for durations of up to three years. Citizenship and Immigration Canada may extend the Canadian Work Permit in increments of up to three years with no limit on the number of extensions providing the employee continues to comply with the requirements for NAFTA professionals.

NAFTA's Appendix 1603.D.1, a list of over 60 occupations, including Accountants, Engineers, Computer Systems Analysts, Management Consultants, Scientific Technologists, is the mechanism by which selected professionals can enter Canada to provide their services. Generally, if an occupation does not appear on the list, it is not a profession as defined by Appendix 1603.D.1 of NAFTA.

If an employer determines that its U.S. citizen worker meets the above-listed requirements of a NAFTA Professional, the employer should work with its immigration attorney to provide the traveling employee with all relevant documents to present the Canadian Work Permit Application to the Canada Border Services Agency officer upon arrival. If the Canada Border Services Agency denies an individual entry in Canada as a NAFTA Professional, it could prevent future entries into Canada for that particular employee and possibly for employer's other workers. Thus, a thoroughly-prepared Work Permit Application on the first entry into Canada is essential.