Oh Canada! Canada Toughens Stance on Business Visitors

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Gone are the days when an employer could send its U.S. citizen employees to the Canadian border with a passport and a simple explanation of the business purpose of the trip. Effective April 1, 2011, Citizenship and Immigration Canada is taking a more aggressive stance against the often abused NAFTA Business Visitor category. Employers cannot use the business visitor category in lieu of obtaining a Canadian work permit for employees who will be actually working in Canada as defined by Canadian immigration laws.

Armed with greater powers to scrutinize employer compliance with immigration regulations, immigration officials now have the discretion to request additional information on employer compliance and the power to impose greater penalties for noncompliance, including debarment from hiring foreign workers for two years.

Although business visitors are generally allowed to stay in Canada for up to 180 days, business visitors typically stay in Canada for a few days or a few weeks. In order for a U.S. employer to send its U.S. citizen employees into Canada as business visitors, employers must show the following:

- The employee intends to stay for less than six months and does not plan to engage in gainful employment in Canada (even if the gainful employment is for a duration as short as a few days);
- The principal place of business of the employer is located outside Canada;
- The primary source of the employee's income is located outside Canada;
- Profits from the employer's business will accrue outside Canada;
- The activity of employee must be international in scope; and
- The employee meets Canada's basic entry requirements and does not pose criminal, security or health risks to Canadians (Canada is particularly strict on DUIs).

Acceptable cross-border business activities include:

- Buying Canadian goods or services for a foreign business or government;
- Taking orders for goods or services;
- Attending meetings, conferences, conventions or trade fairs;
- Providing after-sales service (mainly supervision, not hands-on labor);

- Training by a Canadian parent company;
- Training employees of a Canadian subsidiary of a foreign company;
- Training by a Canadian company that has sold a U.S. company equipment or services; or
- Under NAFTA, a U.S. or Mexican national may also take part in other activities, such as research, marketing and general service.

For example, where a Canadian employer has directly contracted for service from a foreign company, the employee of the foreign company performing services for the Canadian company cannot enter Canada as a business visitor as this entry would require a Canadian work permit. Since a contract exists between the Canadian company and the foreign worker's employer, the Canada Border Services Agency presumes that the employee is entering the Canadian labor market. Since that foreign worker is receiving payment for the service that is being provided, the Canada Border Services Agency deems that the worker is receiving payment from a Canadian source even if the worker is paid by the U.S. employer. Thus, the worker cannot enter Canada as a business visitor.

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

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