

دليل قانون الهجرة الكندي وقانون الهجرة عبر الحدود للولايات المتحدة باللغة الإنجليزية



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Guide to Canadian Immigration Law and United States Cross-Border Immigration Law

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We look forward to hearing from you. Let us know how we may be of assistance and how you can leverage our expertise in helping to meet your business needs. Should you wish to discuss any questions arising from this book, we encourage you to contact our office. Please note that this immigration book has been created for informational purposes only and cannot be relied upon as legal advice.

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Introduction

Business immigration law is about people. At **Ackah Business Immigration Law** our greatest strength lies in the trusting relationships we develop with our corporate and personal clients, their key employees and their families. With over 30 years of combined experience, our law firm has earned the respect of immigration officials and consular staff around the globe. Immigration laws and regulations change quickly and our team of personal and business immigration lawyers and paralegals are at the forefront of these rapid changes.

Ackah Business Immigration Law focuses exclusively on **immigration law**. We provide strategic counsel based on the most recent immigration developments affecting organizations with an international workforce. As one of Canada's most recognized boutique law firms specializing in **Citizenship and Immigration Law**, our team provides thoughtful and expert legal advice to deliver proven and effective business immigration law strategies to our clients. In addition, our high ethical integrity and commitment to client care has earned our firm its national reputation for excellence.

Our goal is to ensure that global companies achieve their human resource and business objectives by working with our specialized business immigration lawyers and paralegals to assist key personnel and their families with crossing borders seamlessly.

Immigration

We provide a full range of Canadian and United States Cross-border immigration services, including:

- Business Visitor Cross-border Applications
- Work Permit Applications
- Express Entry Applications
- Permanent Residence Applications - Provincial Nomination
- Citizenship Applications
- Assistance with Inadmissibility issues due to criminality or medical issues
- Study Permits

This guide book is intended to provide a general overview of Canadian and U.S. Cross-border Immigration Law and is not intended to be relied upon as a legal advice. It is for general information purposes only.

Our Expertise

Ackah Business Immigration Law provides comprehensive expertise in all areas of Canadian and United States Cross-border immigration law. We provide the highest quality of legal services for clients in Canada and around the world.

Our key immigration law service offerings can be found below:

Temporary Residence Status in Canada

Moving to Canada

Have you been thinking about moving to Canada and now want to make the leap? Ackah Business Immigration Law can help.

Whether you are an individual, a family or a business owner; we can review your situation and needs to determine what avenues are available for you to move to Canada. Based on your timing and requirements, we can help you move to Canada with as little stress as possible.

Ackah Business Immigration Law is a boutique law firm specializing in Canadian and U.S. Cross-border immigration law. We focus on our personal commitment to building long-term professional relationships with individuals, families and corporations. We offer our clients, advanced, cost-effective and responsive immigration expertise.

Our innovative approach to client management, strategic advice, alternative fee structures and 24-7 accessibility to our immigration team is what makes our firm truly unique.

Obtaining a Temporary Resident Visa

A Temporary Resident Visa (TRV) is an official counterfoil document placed in your passport that demonstrates to Canadian authorities that you have met the requirements for admission into Canada as a visitor, student or worker. Canada requires citizens of certain countries to obtain a TRV before they can enter Canada. If you want to study or work in Canada, you will need to apply for that document through a separate application.

Under the *Immigration Refugee and Protection Act* ("IRPA"), Temporary Residents are not Citizens or Permanent Residents of Canada, but may legally enter Canada for vacation/holiday, visiting family or attending business meetings. A Temporary Resident is someone who has a fixed or restricted length of stay in Canada and whose visit is subject to various conditions.

You should know that a TRV is not a permission to work or study during a visit to Canada. Some temporary residents can take programs of study up to six months in length, but conditions vary.

If you are planning a visit to Canada, you must determine if you are a visitor and if your stay makes it necessary that you have a TRV. Consulting an expert in such matters is a smart first step. Note that you must obtain a TRV before you leave your country of origin, as you will not be permitted entry into Canada without one, and a TRV is not issued at the port-of-entry.

Not all foreign nationals require a TRV, some people may be allowed to enter with an eTA or Electronic Travel Authorization (eTA). One exceptions to these rules (either needing an eTA or a TRV) are U.S. citizens who can show proper identification at the border.

Getting a TRV

Some people outside of Canada will need to submit their application at the nearest Visa Application Centre (VAC) to their country of residence (as opposed to using the online option). There are options to apply for a TRV online, which requires the use of a scanner or camera to convert your documents into electronic files and a credit card for payment of the application fees. Citizens of some countries are required to give their "biometrics" (fingerprints and photos) as part of the application process. The biometrics are collected only at a VAC, however, the fees for collecting the biometrics can be paid online during the TRV application, if you wish.

To qualify for a TRV, you must meet the following criteria:

- Provide proof you will leave Canada at the end of the approved stay
- Provide proof you have the financial means to maintain your family or self, and return home
- Prove you will not work or study without authorization
- Provide proof of no criminal record

- Prove you do not pose a security or safety risk to the Canadian public
- Have all the required documentation
- Prove you are in good health and not a risk to the health of the Canadian public

To prove the above, you may have specific requirements. For example, you may have to complete a medical examination as part of the application process. Again, if you have specific questions about your TRV, it is wise to consult experts to determine what requirements are in place for your country of origin.

IRCC has made a very useful checklist available online called the Document Checklist for a Temporary Resident Visa.

Once you have started to put together your documents, you must then find the Visa Office where your application will be processed. IRCC has a complete online list that shows you the locations and allows you to discover more about the entire process. The list of Canadian Visa Offices around the globe is found on the IRCC website.

Though not a very complex matter, it must be done properly and in a timely manner. There are no guarantees about how quickly your TRV application can be processed and it is best to get started as soon as you learn you will travel to Canada.

Visitor Entry To Canada

Canadian visas are required for certain people entering Canada on business or for tourism. Though U.S. citizens do not need a visa or what is known as an eTA (Electronic Travel Authorization) all other travelers will need to obtain their proper documents before arrival as of March 15, 2016.

The list of countries requiring an eTA, rather than a visa, is shorter than the list of countries in which you must have the visa to visit for tourism or business. Currently, the foreign nationals from the following nations need the eTA before they can board a flight to Canada:

- Andorra
- Antigua and Barbuda
- Australia
- Austria
- Bahamas
- Barbados
- Belgium
- British citizen
- British National (Overseas)
- British overseas citizen (re-admissible to the United Kingdom)
- British overseas Territory citizen with citizenship through birth, descent, naturalization or registration in one of the British Overseas Territories of:
 - Anguilla
 - Bermuda
 - British Virgin Islands
 - Cayman Islands
 - Falkland Islands (Malvinas)
 - Gibraltar
 - Montserrat
 - Pitcairn Island
 - Saint Helena
 - Turks and Caicos Islands

- British Subject with a right of abode in the United Kingdom
- Brunei Darussalam
- Chile
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hong Kong Special Administrative Region of the People's Republic of China, must have a passport issued by Hong Kong SAR.
- Hungary
- Iceland
- Ireland
- Israel, must have a national Israeli passport
- Italy
- Japan
- Republic of Korea
- Latvia
- Liechtenstein
- Lithuania
- Luxembourg
- Malta
- Mexico
- Monaco
- Netherlands
- New Zealand
- Norway
- Papua New Guinea
- Poland
- Portugal
- Samoa
- San Marino
- Singapore
- Slovakia
- Slovenia
- Solomon Islands
- Spain
- Sweden
- Switzerland
- Taiwan, must have an ordinary passport issued by the Ministry of Foreign Affairs in Taiwan that includes the personal identification number
- United States, lawful Permanent Resident (holder of a Green Card). **US Citizens** are exempt
- Vatican City State, must have a passport or travel document issued by the Vatican.

If you do not hold a passport or document from the above list, you need a Temporary Resident Visa. The requirements for both types of documentation vary depending upon your country of origin and citizenship. Generally, you will need a passport, a clean bill of health, no criminal history, the ability to demonstrate intention to leave at the end of the stay and have enough money to return home, and that you have ties to your country that will take you home. If you have concerns about any of those issues, you will want to consult with an expert who can help you navigate the process.

There are some foreign nationals who require medical exams and letters of invitation as well. Though certain documentation is necessary, the application can be done online at Immigration, Refugees and Citizenship Canada, but many do opt to visit the nearest VAC to their country of residence. The list of Canadian Visa Offices around the globe, is on the IRCC's website.

The Parent & Grandparent Extended Stay Temporary Resident Visa ("Super Visa")

A Super Visa is only available to someone who is either the parent or grandparent of a Canadian citizen or Permanent Resident of Canada. A Super Visa is valid for up to 10 years

To qualify for a Super Visa, you must be able to demonstrate the relationship claimed, have a letter of invitation from the child/grandchild in Canada and meet several other criteria, including income, medical coverage and more. For more details on the requirements for a Super Visa, you can visit the IRCC website.

Study Permits

To study in Canada, international students usually require a study permit. You may apply for a Study Permit only after a college, university, or other accredited educational institution has accepted you. Study permits are only available for those accepted into schools designated to accept international students. Designated learning institutions are on the official Designated Learning Institutions' list, but only at the post-secondary level. Primary and secondary schools throughout the country are automatically deemed as designated institutions.

Once a perspective student determines which schools are designated and is accepted into one, he or she must then put together the appropriate documentation to apply for his or her study permit. Not all students technically require a study permit, if the program is less than six months, you will not require a study permit.

However, it is advisable to obtain a study permit because it will allow you to obtain a "work permit" allowing you to work part-time on campus and possibly off-campus when you are a full-time student.

The Essential Documents:

The most basic documents required by the Visa Office for a study permit includes:

- Proof of acceptance into designated institution
- Proof of identity
- Proof of financial support
- Letter of explanation (explaining why you are requesting a study permit)

To apply for a study permit, you can do so online or on paper by visiting the nearest VAC to their country of residence. Processing times vary based on location, but you can check the expected turnaround times online.

Work Permits

Work Permits that do not require Labour Market Impact Assessment (LMIA)

Work permits are required for any foreign nationals who want to work during their time in Canada. These are issued by IRCC and give authorization for someone to legally work in Canada. The work permit will note the type of work the individual named can perform, the employer(s) they can provide labour for, location they are going to work and how long they are given permission to work in Canada.

To be eligible for a LMIA exempt Work Permit you must:

- Qualify for one of the programs under the International Mobility Program (IMP)
- Have a valid Offer of Employment number issued by your Canadian Employer's Online Portal **or** pay the \$100 Open Work Permit fee if you are eligible for an Open Work Permit.
- Demonstrate that you will leave Canada at the end of your temporary term
- Demonstrate that you have adequate financial means to care for yourself and dependents during the stay
- Have no criminal history
- Not be a threat to Canada's security
- Be in good health
- Have no intention of working for ineligible employers
- Supply any further documentation required

To apply for a Work Permit before coming to Canada you will need to do so either online or at the nearest VAC to your country of residence. You can apply from within Canada only if you meet the specific conditions. You can also apply as you enter Canada, but only if you meet the following requirements: holder of an eTA (electronic travel authorization) and have the ID number of your intended employer.

The LMIA

The Labour Market Impact Assessment (LMIA) is a document that is prepared by Employment and Social Development Canada upon a request by a Canadian employer. The employer will make this request, along with a processing fee payment of \$1,000 and to states that there is a demonstrated need for a foreign worker to fill the job and that no Canadian worker is available to do it. After reviewing the labour market in the location of the job opportunity, the ESDC may issue a positive decision on the LMIA. A positive LMIA decision will qualify the foreign national to apply for a Work Permit.

Do You Need an LMIA to Obtain a Work Permit?

The list of those exempt from the need for an LMIA seems far longer than the list of those who do need it in addition to obtaining a work permit. Though the IRCC says that in "most cases", an employer must obtain a Labour Market Impact Assessment (LMIA) to hire a temporary foreign worker", there are many exceptions.

It is those who are hired within the Temporary Foreign Worker Program who need the LMIA. These workers can be hired to provide short-term labour and to help fill "skills shortages" (where no Canadians are available to do the work).

The employer, prior to employing you, must work directly with Employment and Social Development Canada (ESDC) to arrange to apply for the LMIA.

To work in Canada temporarily, you must first find out if you are eligible to obtain a work permit and then find an appropriate employer who can legally extend an offer of employment. This may mean that they have applied for the LMIA and can prove that you are essential and that no Canadian is available for the work.

To learn more, visit the Government of Canada's Temporary Workers Website to determine if you are eligible and if the LMIA applies to your intended field or job.

Those Exempt from the LMIA Requirements

The exemptions from the LMIA requirements, apply to three different categories within the *Immigration and Refugee Protection Regulations* (IRPR), defined as:

- Agreements R204 - When hiring foreign workers through specific international trade agreements (NAFTA as an example), the LMIA is not required
- Canadian interests R205 - A long list of groups that include charitable work, reciprocal employment, specially designated programs, and more
- "Other" R206-R208

Additionally, employers who fit within the criteria may hire workers through the International Mobility Program without the need for an LMIA. The Employer must submit an online application called an Offer of Employment and pay a \$230 Compliance Fee through their Employer Portal.

Work Permits Pursuant to the Canada-Chile Free Trade Agreement for Chilean Citizens

The Canada Chile Free Trade Agreement (CCFTA), modeled upon the North American Free Trade Agreement (NAFTA) - discussed under the United States Non-Immigrant Status in this guide, allows citizens of Chile to gain temporary entry into Canada to work.

It references identical categories or groups as NAFTA and divides travelers into:

- Business Visitors
- Professionals
- Intra-company Transferees
- Traders & Investors

Where it differs is that visa requirements can be imposed on different individuals within the categories and several of the business activities in NAFTA are not part of the CCFTA.

The Professionals category is also a bit different from NAFTA under CCFTA. Per IRCC, some of the professions' minimum education requirements and alternative credentials, such as the Chilean University Title, were added as alternatives to the requirements which are set out in NAFTA, to reflect the Chilean educational system.

This is something that demonstrates a bit more complexity and is a legal matter best handled by professionals. Before you begin planning a visit to Canada under the terms of the CCFTA it is best to discuss it with an expert to ensure your application is accepted and the process streamlined.

Are Work Permits Needed?

Because the CCFTA is so closely paralleled to NAFTA, the same liberal policies are in place where permits are concerned. For example, qualified business visitors may be free of the need for work permits. Additionally, the intra-company transferees and the traders & investors guidelines for the CCFTA are essentially identical to NAFTA meaning that the need for ESDC confirmation may be waived.

Essentially, the benefit of entering through CCFTA is that your employer will not need to obtain a Labour Market Impact Assessment (LMIA). This eliminates the need for them to have the job offered to you approved by ESDC.

This tells us that it may be more complex than just making certain your industry and position qualifies you for access via the agreement. Naturally, the same rigid standards apply where qualifications for specific professional categories are concerned, and that is the best place to begin determining just what is needed. The IRCC has a list of jobs that do not need a work permit available online, and you can visit the IRCC page for work permits and visas in Chile to learn more.

At the most basic level, you must determine how your employer can submit an offer of employment to the IRCC if you are not in need of a LMIA, and then you must apply for a work permit if your category requires it. You should apply as soon as you get written proof that you have a job offer.

There are different requirements for obtaining a permit, if needed, and though you may qualify under the trade agreement, it is important to be certain of the status in your specific job category.

If you are considering a temporary visit and will be doing so under the CCFTA, speak with a legal expert well ahead of time to clarify your situation and get all your documentation in order.

Work Permits Pursuant to the General Agreement on Trade in Services

The General Agreement on Trade in Services (GATS) is often described as being like the North American Free Trade Agreement. It is an agreement under the World Trade Organization that came into force in January 1995.

The main purpose of GATS immigration regulations is to facilitate the entry of business personnel, technical personnel and executives of a company located in one of the member nations to a company located in another member nation (e.g. Canada) with which it is already doing or wishes to do business with, or plans to open a branch office or subsidiary in other member nations.

However, there are some larger differences. For example, under GATS, the Canadian Government has created only three categories of businesspersons allowed exemption under the agreement. These are:

- Business visitors
- Intra-company transferees
- Professionals

The business visitor category does not require a work permit because the individual is not entering the Canadian labour market. Naturally, that person must meet all the specific qualifications, showing that they will not enter the Canadian labour market, that their employer is outside of Canada and that they are being paid by the foreign employer.

The intra-company transferee category is a work permit category - same as the professionals' category, but the conditions for qualification for professionals are more complex. The intra-company transferee must prove the relationship between the foreign and Canadian company and show why the foreign worker is more qualified than the existing or potential Canadian workers for the position in Canada. GATS professionals must meet minimum educational requirements as well as certain licensing requirements. The professionals must also have a contract in place before arriving that shows they will be employed in their professional capacity and will be remunerated in this capacity with the fair market wage in the region of the employment.

Fundamentally, GATS offers certain foreign nationals and their employers relief from the need for a LMIA, but not always the need for work permits. Because you must have all your documentation in order before you arrive, it is best to begin the application processes ahead of time, and discuss any questions you might have with legal experts on such matters.

LMIA Exempt Work Permits

If you are about to head to Canada to work - whether temporarily or on a long-term project - you need to understand what is necessary in terms of required documentation. Work permits are usually required for almost any traveler heading to Canada to work. Essentially, you can assume that you will require a work permit if you become part of the Canadian labour market for only a length of time.

Immigration, Refugees and Citizenship Canada (IRCC) does have a very clear set of definitions about "business visitors" and whether you qualify. If you are concerned or confused, you will want to discuss that with a legal expert as you begin to put together the various documents required for working and visiting Canada.

In addition to the work permit, however, you may also need a Labour Market Impact Assessment (LMIA). This is something that all employers who intend to hire foreign national workers must obtain. It is issued from Employment and Social Development Canada Service (ESDC) and when it is completed, it must be "positive" or the employer cannot hire a foreign national for the specific position. A positive LMIA tells IRCC that the entry of a temporary foreign worker in the position named will create either a positive or neutral effect on the Canadian labour market.

Some jobs require an LMIA for a permit to be issued, however some jobs are entirely exempt of the need for the LMIA.

As per IRCC's requirements, employers who hire qualifying foreign workers through the "International Mobility Programs" will not require an LMIA. Many of the programs, are the different "trade agreements" that Canada has created with other countries. The list of workers exempt from LMIA is limited, and all the workers will require a work permit before entering the Canadian labour market, which includes:

- Workers who qualify under international agreements (i.e. NAFTA, GATS, etc.)
- Those who are taking part in exchange programs (i.e. International Experience Canada exchange programs, academic exchanges, etc.)
- The spouses of some foreign students, some skilled foreign workers, and those in Canada legally applying for permanent citizen status
- Workers who are eligible through federal-provincial or territorial agreements
- Those workers nominated by a Territory or Province for Permanent Residence
- Those already at work in Canada who are applying for Permanent Residence as skilled workers, tradesmen, or the Canadian Experience Class
- People working as repair personnel in commercial or industrial equipment
- Academics
- Co-op students
- Religious workers
- Those who must support themselves while staying in Canada, i.e. refugee claimants
- Those who are working in intra-company transfers
- Those who qualify under reciprocal benefits
- Entertainment and arts workers may be exempt
- Post-graduate work permits
- Some off-campus work permits for students

This is a complex matter and not one to make any assumptions about. The LMIA can take time and greatly lengthen your work permit application time. It is fully recommended that you speak with an expert if you are unclear about your situation.

The LMIA is a complicated process and can be confusing. Be sure you understand the requirements as you begin to put together your work permit application.

Caring for Children and Caring for People with High Medical Needs Work Permits

To work as a caregiver for children or people with high medical needs in Canada, the applicant must be qualified to provide care for the elderly, disabled or for children. Caregivers work in private homes and do not have direct supervision as they do their jobs.

As in so many other parts of the world, though, there is a high demand for workers of this kind, and it is not unusual for foreign workers to seek employment as caregivers in all parts of Canada. IRCC had created the Caring for Children and Caring for People with High Medical Needs categories under the Temporary Foreign Worker Program. Temporary Foreign Workers under this category may qualify to apply for Canadian Permanent Residence.

Meeting the Requirements

Under the Temporary Foreign Worker Program (TFWP), families can hire foreign caregivers. However, the caregivers must:

- provide care on a full-time basis (minimum 30 hours per week);
- work in the private household where the care is being provided; and
- meet the requirements set by Employment and Social Development Canada (ESDC)/Service Immigration, Refugees and Citizenship Canada (IRCC).

These families or private household employers will be able to hire foreign workers, on a live-in or live out basis, for 2 categories of in-home workers, which include:

1. Caregivers for children:
 - Children under 18 years of age. This category could include positions such as: Child care provider, live-in caregiver, nanny (NOC 4411)
2. Caregivers for people with high medical needs:
 - elderly persons, 65 years of age or over; or people with disabilities, a chronic or terminal illness. This category could include positions such as: Registered nurse or registered psychiatric nurse (NOC 3012), Licensed practical nurse (NOC 3233), Attendant for persons with disabilities, home support worker, live-in caregiver, personal care attendant (NOC 4412)

Screening Is Necessary

Because the work of a caregiver is such an important matter, the Visa Office closely screens those who apply to work within the caregiver program. They must meet specific criteria to be granted access to this program, including:

- Specific educational requirements
- Specific amounts of hands-on experience in the caregiving field
- Fluency in English or French to allow them to work without supervision
- Full clearance in their medical, criminal, and security records

- A contract signed by the Canadian employer

The contract must also meet very specific terms, explaining everything from the hours of work, wages paid and the specific duties, to a very clear itemization of the benefits to be paid.

When You Need a Work Permit

For those who hope to work in the caregiver program, they will require a regular work permit or a caregiver permit renewal. The regular work permit follows a very standard protocol and can be done online or through a local Visa Office outside of Canada.

Inadmissibility to Canada

Known for its friendliness, Canada nonetheless does have policies that allow it to effectively deny admission for those it deems a risk or threat.

The most common reasons that you will be deemed inadmissible are:

- Conviction of a crime (in Canada or outside of it)
- Involvement in organized crime
- Involvement in human rights violations
- Committed an act in a foreign nation that is a crime under Canadian law
- Certain financial, health or security reasons

If you are refused entry to Canada because of some of those reasons, there may still be ways to enter the country.

Criminal Rehabilitation

This is a formal decision made before you reach the border by Canadian consular officials. You must apply for one and it must be at least five years since you completed all the requirements of the sentence, such as paying any fines and completing parole.

You may also get a pardon or discharge from the state or country where you were convicted. This too can allow you to obtain that re-entry, but only the IRCC office may accept that and not the Officer at the border.

If it has been less than five years since your court sentence was completed and you have a compelling reason to enter Canada, you may be able to obtain a Temporary Resident Permit. This is a document that allows you to enter and remain in Canada temporarily despite your status as being inadmissible.

"Your need to enter or stay in Canada must outweigh the health or safety risks to Canadian society, as determined by an immigration or a border services officer. Even if the reason you are inadmissible seems minor, you must demonstrate that your visit is justified."

Permits are issued for fixed periods of time, and you must leave Canada by the expiry date or get a new Temporary Resident Permit (TRP) before the original document expires. Obtaining a TRP along with other visas require an application to be submitted on paper at the nearest VAC to your country of residence or if separate, directly to the Visa Office responsible to your region by mail or courier only. As with all applications, there are fees associated with Temporary Resident Permits.

Deemed Rehabilitation

Those who have been convicted of one crime may consider gaining access to Canada by being "deemed" rehabilitated. This is going to depend on how long it has been since the crime was committed. If enough time has passed since all the conditions of the sentence for the conviction were met, you may be eligible for deemed rehabilitation.

Border officers are given a lot of discretion on this issue. They have authority to ask about the type of crime, whether you were guilty of multiple crimes and even discuss the stability of your life. They are also going to consider if you are likely to commit another crime and the length of time since your last offence. Often, if it has been ten years or more since the conviction and all conditions have been satisfied, you will be granted deemed rehabilitated status.

Some people take a risk and wait until they are entering Canada to find out if they qualify for deemed rehabilitation status. Rather than wait, it is best to apply for a determination of individual rehabilitation.

Restoration of Status

Travelers authorized to enter Canada, can be admitted within three categories: visitors, students, or workers. In all cases, they are considered as "temporary residents" and are given temporary resident status for a limited and fixed period of time.

Based on their personal situation, temporary residents must comply with various conditions as per IRCC's requirements. Failing to do so may put them at risk of losing their legal status in Canada and resulting in the individual being required to depart the country. In some cases, there are ways of restoring each status. The first step towards restoration of status is often getting in touch with a legal expert who can review your case, and help you determine the best course of action. Each situation is different, and you may need to obtain advice as to how to apply and the best application method for restoration of status.

The Requirements for Restoration

Those who have been refused an extension to their temporary resident status, and were in status (including implied status) until the refusal, have 90 days from the date of the refusal notice to apply for a restoration, if otherwise eligible.

If you have lost your status because you failed to comply with the conditions or requirements of your stay, you may be eligible to apply for a renewal or extension.

As You Wait

During the restoration process, you must **not** continue to work or study until you have normalized your status and been issued a new work or study permit.

If you leave Canada without your status being restored, you must submit a fresh application, following the traditional visa application processes, to re-enter Canada.

Once your application and fees have been received, your situation will be assessed. If your status was expired or you are in violation in some way, you must go through a more rigorous procedure. An Officer will assess your eligibility, and if you are deemed ineligible they will refer the case to Minister's delegate. If you are eligible for

restoration, it is imperative that your application prove that you met all requirements for the Officer to issue a new status document.

Restoration may also require an interview at a local IRCC office. At that point, the issue can go only one of two ways - you are restored or refused. Those issued refusals must leave Canada promptly. Those restored can remain in Canada and adhere to the conditions granting that restoration.

Permanent Residence Status in Canada

Express Entry - Permanent Residence Application

Express Entry was launched by the Canadian Government on January 1, 2015 to select skilled immigrants as Permanent Residents to Canada based on their ability to settle in Canada successfully.

Express Entry is a Points Based System used to manage applications for Permanent Residence under three federal economic immigration programs:

- Federal Skilled Worker Program
- Canadian Experience Class
- Federal Skilled Trades Program

Provinces and territories can also recruit candidates from the Express Entry system through their Provincial Nominee Programs to meet local labour market needs.

Step 1 - Potential Candidates must complete an Online Express Entry Profile called an Expression of Interest

Step 2 - The highest-ranking candidates in the pool will be issued an Invitation to Apply (ITA) for Permanent Residence

Candidates will be ranked against others in the pool using a point-based system called the Comprehensive Ranking System. Points are awarded based on age, language skills, level of education and adaptability.

Increasing your points will depend on:

- having a job offer, with or without an LMIA, or
- skills and experience factors.

A candidate can get additional points for:

- a nomination by a Province or Territory, or
- a Canadian degree, diploma or certificate

A candidate can get further additional points by June 6, 2017, for:

- having strong French language skills, with more additional points going to candidates who also have English language skills, or
- having siblings in Canada

These additional points could cause a candidate to rank high enough to be invited to apply at the next eligible round of invitations.

Once candidates are invited to apply, they will have 90 days to submit an online application for Permanent Residence. There are no extensions to this timeline and a candidate who is unable to submit all the required documents within the 90 days' period must decline the ITA.

IRCC will process most complete applications (meaning those with all the necessary supporting documents) in six months or less.

Candidates will remain in the pool for up to 12 months. If they do not receive an ITA for permanent residence within 12 months of submitting an Expression of Interest, they must submit a new profile to re-enter the pool. This will prevent backlogs and ensure quick processing times.

Express Entry - Permanent Residence - Federal Skilled Worker

Express Entry was created to allow skilled workers to enter Canada much more rapidly than ever, but it works by allowing employers and government officers to choose the immigrants based on their skill set and on Canada's needs. Under this system, prospective immigrants would apply to express their interest in coming to Canada by answering a series of questions about their professional skills, their education and languages spoken.

The minimum requirements for the Federal Skilled Worker category are as follows:

- Must have 67/100 points
- Be at least one year (1,560 hours) of work in your field
- It must be paid
- Experience must be in the same NOC skill type (0, A or B)
- Your experience must have occurred in the past ten years
- It must meet the skill type or levels, per the National Occupational Classification (NOC) of 2011

There are also language abilities that must be met, educational requirements, and six "selection factors" that must all be met before you qualify. These include issues beyond those already mentioned, and feature your age, a valid job offer, and more. There is also an economic criterion that must be met, and you must be admissible to Canada as well as intending to live outside of the Quebec Province.

If your immigration within the Federal Skilled Workers Program is possible, you must then apply for permanent residence under Express Entry. But to do that, you will need to be invited to do so.

There are no specific lists of requirements because each Applicant is unique. The IRCC says "When you have completed the application, the system will generate a personalized Document Checklist for you. It will show all the supporting documents you need to upload."

Please note that by June 6, 2017, Job Bank registration for Express Entry candidates becomes voluntary for all candidates. Therefore, candidates who meet the minimum entry criteria for Express Entry will be automatically placed into the pool and immediately eligible for invitation rounds. If they do not currently have a job in Canada and would like to start their job search, they will be able to register for Job Bank.

Though it is beneficial, the Express Entry process is confusing, and a legal expert is often a great resource to guide you through your application.

Express Entry - Permanent Residence - Federal Skilled Trades

The Federal Skilled Trades program was created for those seeking to become Permanent Residents based on their qualifications in a specific skilled trade. There are minimum requirements that must be met:

- No plans to live in the Province of Quebec as it does not use this system
- Language skills at the necessary minimum benchmark levels
- Two full years of full-time experience in a skilled trade
- An offer of full-time employment must be made (for at least one year of employment) or a "certificate of qualification in that skilled trade issued by a Canadian provincial or territorial authority" must be available
- The job must meet the criteria for skilled trades as laid out by the NOC (these are Major Group 72, industrial, electrical and construction trades; Major Group 73, maintenance and equipment operation trades; Major Group 82, supervisors and technical jobs in natural resources, agriculture and related production; Major Group 92, processing, manufacturing and utilities supervisors and central control operators; Minor Group 632, chefs and cooks; and Minor Group 633, butchers and bakers)

If you believe you qualify for the Federal Skilled Trades Program, we suggest you speak with a legal expert to confirm your eligibility.

Express Entry - Permanent Residence - Canadian Experience Class

To qualify for Canadian Experience Class, the candidate would need to have at least one year of work experience in Canada within the last three years prior to submitting the application. The experience would have to be in Canada and with proper authorization. The skilled work done in Canada must also meet the Canadian National Occupational Classifications (NOC):

- Managerial jobs (NOC skill level 0)
- Professional jobs (NOC skill type A); or
- Technical jobs and skilled trades (NOC skill type B)

Your initial EE application places you into a pool with other eligible workers. There, you are all ranked and if you meet the minimum necessary cut off points, you will receive an ITA via Express Entry.

Provincial Nominee Program Applications

Provinces and Territories encourage applications for Permanent Residence from people with skilled abilities, education and work experience that will contribute to the Provincial and Territorial economy.

How It Works:

Each Province and Territory has its own specific requirements and procedures. Currently, the following Provinces and territories can nominate potential immigrants:

- Alberta
- British Columbia
- Manitoba
- New Brunswick
- Newfoundland and Labrador
- Northwest Territories
- Nova Scotia
- Ontario
- Prince Edward Island
- Saskatchewan
- The Yukon Territory

Under the Provincial Nominee Program (PNP), each Province or Territory is issued with a number of PNP certificates a year by the IRCC and once all the certificates have been issued for the Calendar year, the Province

or Territory must wait until the following year to start processing more applications. For this reason, PNP will close the application process at various times. Therefore, to become a nominee, Applicants must first submit applications to the Provinces they are interested in. Once nominated, an Applicant will make an application to IRCC for Permanent Residence. When applying to IRCC, the Officer will review the medical tests, criminal background and financial stability to make a final decision.

PNP and Express Entry

If you use the Express Entry approach, you must meet the individualized requirements of the Province or Territory, get a nomination in that Express Entry stream, provided the Province has an agreement with the Federal Government and meet other requirements that are aligned with Express Entry. These include:

- Federal Skilled Trades Program
- Canadian Experience Class Program
- Federal Skilled Workers Program
- Some Provincial Nominee Programs

The use of the PNP is a great way of ensuring you have the best chances at a streamlined immigration method and will work in an industry in which you have specific skills. The Provinces and territories each have unique needs and it may be a very wise choice to explore which of these areas are experiencing the greatest demand for people with your professional skills and experiences. We are available to assist you with PNP.

Family Class (Spousal Sponsorship) Applications

The Family Class Application is a way for a Canadian Permanent Resident or Citizen of Canada to sponsor their spouse, common law partner or conjugal partner (including same-sex partner), to immigrate to Canada.

Under the IRPA and IRPR, you are eligible to apply as a sponsor to a spouse, common-law or conjugal partner, or dependent children if you are a Canadian Citizen or a Permanent Resident of Canada. To be a sponsor, you must be 18 or older, not in bankruptcy, and has not been charged with any criminal offence.

Things to Know

As of December 2014, the Canadian Government has announced that eligible spouses or common law partners living in Canada, would be permitted to work while they wait for the processing to be completed. The IRCC will issue an "open work permit" to those who have applied for permanent residency from within Canada and included application for work permit.

This application is best done with the help of a knowledgeable and experienced professional, who can help you to understand any points of confusion, or to overcome any issue that may pose a challenge to the application process.

Self-Employed Applications for Permanent Residence in Canada

Canada has certain ways for people to qualify for Self Employed Permanent Residence, which is often based on their work, skills and education.

There are three pathways for Permanent Residency for those who are self-employed:

- Cultural activities - This is a very broad and liberal grouping that can include artists, musicians, film makers, illustrators, journalist, and anyone who is a behind the scenes worker in cultural

industries. Applicants in this category, must meet the criteria of "world class" workers. Costumers, choreographers, and directors, all fall under this heading

- Athletics - Coaches, trainers and athletes all fall under this heading
- Purchase and management of a farm - Described as difficult to prove. You will need to demonstrate that you can support yourself (and your family if you have one) through your farming activities in Canada

Applicants must have a proven record of earning an income and supporting themselves and their families through their work and have some form of management experience.

Qualifying and Applying

To qualify for the Self-Employed Stream, you must have relevant experience that meets the need of the specific area in which you work. Just like everyone else hoping for Permanent Resident status in Canada, you will have to submit an application. However, it is not as simple as it sounds. More information can be found on the IRCC Website.

Your application is scored out of a possible 100 points. To be accepted you must earn at least 35 points. As an example, if you have five years of demonstrable and proven experience, you receive 35 points. If you can only prove two years of experience, it is worth 20. The officer receiving the application also takes into consideration your age (with points deducted for each year over 49 and under 21). Your education and your language levels boost your score, and your "adaptability" will play a role as well.

And if you don't hit 35 points? There is still an option for entering as a self-employed person. It is entirely at the discretion of a Visa Officer to grant Permanent Residence, but you must formally ask for that consideration. Again, though you will need evidence proving you will be successful in your chosen field, the process of consideration is complicated, with two officers needing to be in agreement.

Therefore, self-employed immigrants into Canada will benefit greatly from time spent with an expert, discussing options and making the best application possible.

Entrepreneur Applications for Permanent Residence in Canada

The Canadian Government announced in October 2015 that Canada wants entrepreneurs and Canada's Start-Up Visa is the first of its kind in the world, linking immigrant entrepreneurs with experienced private sector organizations that have expertise in working with start-ups.

Successful Applicants in this program will be able to immigrate to Canada as Permanent Residents with no conditions attached to the success of their business.

Naturally, it is not as easy as proclaiming yourself as an entrepreneur and receiving immediate permanent residency. Qualifying for this program requires the following:

- You will have to prove that a Canadian "angel investor" is committed to your business idea
- You will have to pass standard health and security checks
- You will have to demonstrate an ability to communicate fully in English or French. Applicants will need to take a IRCC approved language test and hit the CLB 5 benchmark in one or both languages
- You must have at least one proven year of study at a post-secondary institution
- You will need to demonstrate that you have adequate income to support yourself while establishing the business (as well as your family if you have one immigrating with you). You cannot borrow this money from another person. You will need to prove you have this when submitting the application

Clearly, this means that the first step is to obtain your financial commitment by an angel investor. The Canadian Government has revealed its dedication to making this program a success by collaborating with several groups. IRCC is aligned with Canada's Venture Capital and Private Equity Association, the National Angel Capital Organization and the Canadian Acceleration and Business Incubation Association to identify the participating private sector organizations. A full list of designated organizations is made available at their website.

Eligibility and Next Steps

Once you have the commitment in hand and a formal letter of support, you will need to prove that your business meets the formal ownership requirements. Currently, up to five people can apply for a visa as the owners of a single business. They must each have ten percent control and the designated organization (the angel investor) along with the Applicants must have more than 50% voting rights as well. This must be shown when submitting the application along with the financial ability of the Applicants.

Naturally, it does take a lot of planning, and the first step is to be sure you can obtain solid financial backing and support through a designated organization. Once you have that letter of commitment, you must meet the visa eligibility requirements. Then you can be on your way to business ownership in Canada as a Permanent Resident.

In Home Caregiver Permanent Residence Applications

In November of 2014, the government of Canada announced that it would make major reforms to the Live-in Caregiver Program. These changes were aimed at giving more opportunities to caregivers to become Permanent Resident, and ensured that workers' rights were upheld.

The changes also incorporated an elimination of the mandatory "live-in" component which formerly demanded that caregivers live with the employers, instead making "live-in" an optional part of their working arrangements. This was because many cases of worker exploitation had occurred in which housekeeping and other non-work related tasks were imposed. Additionally, the living expenses portion of the regulations was altered, preventing employers from reducing pay for room or board.

The changes in regulations also created two new categories through which caregivers can apply to obtain Permanent Residence. They included pathways for childcare providers and caregivers tending to elderly or patients with chronic medical need.

The Program

Caregivers under either category must meet the following requirements:

- They must have worked full-time for at least two years before they can apply for Permanent Resident status, or have 3,900 hours of authorized employment within 22 months
- They must have gained all work experience within four years of arrival in Canada

Applying

When you apply for Permanent Residency through the caring for Children or caring for People with High Medical Needs, you are required to include all your family in the application too. This is true even if they are not interested in coming to Canada at that time. This is because any family members not noted on the application will be unable to receive your sponsorship (or that of your spouse or partner) later. Your entire family can obtain Permanent Residency status all at once.

Even if your family is not within Canada, you can all apply and they will make their way through the process using the local Visa Office. They must go through the typical criminal and medical screening, and once you have the Permanent Resident status, your family outside of Canada will be issued their visas.

Canadian Citizenship Applications

As one might expect when wanting to become a citizen of any country, there are eligibility criteria that must be met to qualify. The below are new regulations that are expected to be in force by the Fall of 2017.

To become a Canadian citizen, the requirements are outlined by IRCC as follows:

- Being of the proper age - You must be 18 or older. Anyone under 18 must have an application made for the minor by a parent or guardian. The minor must already be a Permanent Resident of Canada
- Must have permanent residence status – This is the first step to becoming a Canadian citizen; you must have already obtained permanent residence status
- Time in Canada - To be eligible for citizenship in Canada, the Applicant must have been in Canada (i.e. physically present) for at least 1,460 days during the six years immediately before the date of application. Specifically, the individual must be present for at least 183 days during each of four calendar years that are fully or partially within the six years immediately before the date of application
- Income tax compliance - Only those who can demonstrate that they have met personal income tax filing requirements for four years within the six years before the application may qualify for citizenship
- Show intent to reside in Canada - Declaring your intent to reside is mandatory and means that you will live in Canada
- Pass language criteria - citizens must be proficient in one of the two official languages - either French or English. Specific levels of skill apply, and a formal test is given to allow the Applicant to demonstrate proficiency
- You do not have prohibitions against you - Crimes committed outside or inside of Canada may negate your ability to become a citizen
- Unless you are 65 years of age or older, you must be able to demonstrate, in English or French, knowledge about Canada and the responsibilities and privileges of citizenship

These criteria must all be met prior to filing your citizenship application. If you have served in the Canadian Armed Forces, the “fast track process” may be more appropriate to you. There are two standard application kits - those for Adults and those for Minors. Adults can apply for their children at the same time they apply for their own citizenship.

All applications require the submission of various supporting documents and fees. Fees are payable only in Canadian funds, and may be submitted via the online option or at specific financial institutions. After you apply, you will be contacted to take the formal Citizenship Test.

As IRCC notes, if you are between 14 and 64 years of age when you apply for citizenship, you must take the citizenship test. All the test questions are based on what’s in the Discover Canada Guide. Applicants must study this guide to prepare for the test. The guide is available in both English and French. The time and place of the test is provided once the application is processed and you learn the results immediately after completing the test.

Passing the citizenship test is the final step to allow you to receive a ceremony date. You will take the Oath of Citizenship and become a full citizen at the Citizenship Ceremony. If you do not pass, you can take a second test later.

As you might guess, there is a great deal involved, and it is always best to speak with an immigration expert if you have concerns about your citizenship application in Canada.

Apart from assisting with Canadian Immigration Law matters, Ackah Business Immigration Law also assist with the following US immigration law matters:

United States Non-Immigrant Status

Visitors for Business to the U.S. - B-1 Visa

Entering the United States is documented in one of two ways - as an Immigrant or as a Nonimmigrant. A Nonimmigrant is someone who will "enter the U.S. on a temporary basis – whether for tourism, business, temporary work or study purposes. Once a person has entered the U.S. as a Nonimmigrant, they are restricted to the activity or reason for which they were allowed entry."

Those who are planning to visit the U.S. to participate in business activities "of a commercial or professional nature" may be eligible for a B-1 Business Visitor visa. The following activities may prompt the issuance of a B-1 visa (but this list is not exhaustive):

- Consulting with business associates
- Traveling for a scientific, educational, professional or business convention or a conference on specific dates
- Settling an estate
- Negotiating a contract
- Participating in short-term training
- Transiting through the United States: certain persons may transit the United States with a B-1 visa

The United States State Department also identifies athletes, lecturers and speakers, researchers, sales professionals, service engineers, and anyone in training as a candidate for B-1 visa as well. Naturally, you must be able to demonstrate eligibility to qualify for this type of visa and the United States Citizenship and Immigration Services (USCIS), requires that you:

- Offer evidence of the purpose of the trip (showing it to be legitimate)
- Make it clear that you plan to remain only for a temporary period
- Demonstrate that you have the funds necessary to pay for your stay and return home
- Offer evidence that you have a home outside of the US that you fully intend to return to.

Not all people traveling for work or business will qualify for the B-1 visa, and it may be that you are better suited to the temporary work visa instead. It is important to clarify the right path as soon as possible to ensure you get our visa quickly and easily.

Visitors for Pleasure to the U.S. - B-2 Visa

There are different kinds of visas, but for those who are traveling to the U.S. purely for pleasure will need to acquire a B-2 visa. NOTE: Citizens of some countries may travel to the U.S. for tourism, while in transit, or for business (up to 90 days) without a visa. There are 38 countries to which this applies, including Canada, the UK, and others.

Though, described as a tourist visa, there are certain criteria that must be met to obtain a B-2 visa, and they include:

- The reason for travel is for tourism, vacation, family/friend visit, medical care, participation in a social or organizational event, participation in an amateur even (sporting, musical, theatrical, etc.) but not for pay, or enrollment in a course of study (not for credit)

- The stay is for a limited and specific period
- The Applicant must have a place of residence outside of the United States that is a binding tie to which they will return
- The Applicant must be admissible to the United States and able to return to their country at the end of the visit
- The Applicant has the financial means to pay for the visit and departure home at the end of the stay

Application

Like all other visas, you must apply for the B-2 visa from outside of the US. This is done through an embassy or consulate, though you can often submit the application online.

Final travel plans or the purchase of nonrefundable tickets should not be made until a visa has been issued."

That is why it is so important that you ensure you meet all the requirements for the B-2 visa. Though the officer at the embassy will determine if you qualify, based on your application, the facts presented, and your interview, you may want to consult with a lawyer ahead of time to avoid costly or difficult delays.

Not all people traveling for pleasure meet the criteria for a B-2 visa, and it may be that you are better suited to another type of visa. It is important to clarify the right path as soon as possible to ensure you get your visa quickly and easily.

NAFTA Professional Work Permits for Canadian or Mexican Citizens - TN Visa

The North American Free Trade Agreement (NAFTA), has created a unique opportunity for Canadian and Mexican citizens interested in entering the United States for professional work. The TN nonimmigrant classification permits qualified Canadian and Mexican citizens to seek temporary entry into the United States to engage in business activities at a professional level.

The specific professions that can use the TN visas include:

- Accountants
- Engineers
- Lawyers
- Pharmacists
- Scientists
- Teachers
- And another 60+ professionals

Of course, it is not strictly the profession that determines if you qualify for a TN visa, you must also meet the following requirements:

- You must have citizenship in Canada or Mexico - You will not qualify if you are a Permanent Resident
- You must have a profession that qualifies under TN NAFTA guidelines
- You must have proven qualifications to practice in the profession
- You must have arranged full or part-time employment with a U.S. employer

Those who hold Canadian citizenship will be able to obtain a TN visa at the time you enter the U.S. You will need specific documentation to present to the U.S. Customs and Border Protection (CBP) officer. This includes:

- Proof you are a citizen of Canada

- A letter from the prospective employer itemizing the work, your capacity, the purpose of the work, the length of your stay, and educational background, among other items
- A full package that illustrates how you qualify for the category
- Your credentials for evaluation
- Any fees

When you meet the criteria, a CBP office may admit you to the U.S. with your TN nonimmigrant visa. Naturally, it may seem like a bit of a risk to appear at the border and hope all goes well. Therefore, so many people from Canada will get in touch with an immigration expert ahead of time, enabling them to be fully prepared long before arrival at the U.S. border.

Mexican citizens will need to obtain a TN visa from the nearest U.S. Embassy or Consulate in Mexico. Approval of this visa allows for admission into the country via designated stations.

Limitations

Obviously, there are some issues that can develop around the TN visa, and whether you are a Mexican or Canadian citizen it is best to have those questions answered long before you book your visit. A qualified expert is an essential resource for an easier visa process.

Intracompany Transfer Work Permits L1 Visa

The Intracompany Transfer Work Permits L1 Visa, is another avenue of entering the United States on a temporary basis. Naturally, those who enter on nonimmigrant status for business or temporary work will fall into a broad range of categories. For example, some people enter using a business or B-1 visa, and some enter using an "Intracompany Transferee" work permit. There are two types - the L-1A or the L-1B visas.

The L-1A Visa

The "L-1A nonimmigrant classification enables a U.S. employer to transfer an executive or senior manager from one of its affiliated foreign offices to one of its offices in the United States; It is also a classification that would allow a foreign company without a U.S. office to send one of their executives to the U.S. to open such an office.

As one might guess, there are some specific guidelines for the use of the L-1 classification:

- There must be a relationship between the employer and the foreign company
- The employer must be, or must soon be doing business as an employer in the U.S. and one other country, though international trade is not mandatory

Once an employer is deemed qualified, then the employee obtaining the L-1A visa must meet specific criteria:

- They must have been working for the company for at least one full year within the previous three years
- They must be entering the U.S. to provide senior managerial or executive level work for the company

Note that it is of the utmost importance to point out that the USCIS goes to great lengths to provide formal definitions of many of the terms used in the criteria. Because of that, it is strongly advised that anyone considering the use of an L visa consult with an immigration expert familiar with these visas.

The L-1B Visa

The L-1B visa enables a U.S. employer to transfer a professional employee with specialized knowledge skills relating to the organization's interests from one of its affiliated foreign offices to one of its offices in the United

States." And just as the L-1A allows the employee to enter the U.S. to help in the establishment of an office, so too does the L-1B provide entry for the specialist to help in the same way. The L-1B applicant must show specialized knowledge that cannot be easily found in the local labour pool

The families of L-1 visa holders may be admitted via an L-2 nonimmigrant classification and may be awarded the same periods of stay as the worker. Though, this too is something that is best handled in consultation with immigration experts familiar with this area of the law.

If the use of the L-1 visas is frequent, there is an allowance for "blanket petitions" that enable firms to file Form 1-129S and send it to the employee in need of the visa. That form, along with essential documents expedites the Visa process somewhat. Getting expert help is a key to success.

Student Status - F-1 Visa

Citizens of foreign countries wishing to enter the United States can do so only with a visa that identifies them as an Immigrant or Nonimmigrant. The nonimmigrant visas are those issued to people who intend only to stay in the country for a limited period without seeking permanent residency or citizenship. One group that requires special visas and who travel under the nonimmigrant status, are students.

If you will be entering the United States with the intention to attend a high school, private elementary school, university or college, conservatory, seminary, or "another academic institution, including a language training program" you will need the F-1 visa. Though it might seem that you may be able to apply for and use a standard visitor visa, the terms and conditions are not acceptable for remaining in the U.S. as a student. Additionally, you are not permitted to use the Visa Waiver Program, even if you are from a country that participates in this option.

When You Can Apply

The first step you will need to take to apply for your F-1 visa is to apply to, and be accepted into, what is known as the Student and Exchange Visitor Program (SEVP) approved school. The Department of Homeland Security website has a search engine allowing you to look for schools or download the full list.

Acceptance to your school of choice is necessary before you can apply and it also places you in what is known as the "Student and Exchange Visitor Information System" (SEVIS). This is a listing for which you must pay, but it is necessary for moving forward with the visa process.

Naturally, it may be confusing to handle this pre-application process and it is advisable that you discuss your intention with an immigration professional before you even apply to any of the schools you are interested attending.

Nonimmigrant Waivers of Inadmissibility

According to the U.S. Customs and Border Protection website, there "are many reasons why a person may be ineligible to enter the United States. The legal descriptions are lengthy and complex...". This explains why anyone deemed inadmissible for entry into the U.S. will want to speak with an immigration expert for guidance and help in obtaining what is known as a Waiver of Inadmissibility.

An application for Nonimmigrant Waivers of Inadmissibility allows you to submit an application for nonimmigrant visas (B-2, F-1, H-1B, J-1, or L-1) and request a waiver of your inadmissibility status. The waiver is requested at the time you submit the nonimmigrant visa application. If a consulate or embassy approves the application, it is sent to the U.S. Department of Homeland Security (DHS), which will decide whether to waive the inadmissibility.

Why would someone be inadmissible? There are many reasons, such as:

- You are infected with a communicable disease
- You have committed fraud in obtaining a visa
- You have a history of drug abuse
- You have a history of unlawful presence in the U.S. (longer than six months, which usually bars anyone from re-entry for three to ten years)
- You have convictions on your criminal record
- You have trafficked in human beings or drugs
- You are a documented money launderer

Generally, except for people inadmissible due to security or other narrow areas, almost anyone can apply for a waiver. Each request is considered on an individual basis. The DHS officer who reviews the case will grant a waiver only after considering:

- The risk of harm to society should the waiver be granted
- The relative seriousness of the violations leading to the inadmissible status
- Why the individual wants to be admitted to the U.S.
- The length of time since the violation that caused the individual to be inadmissible

If the consulate or embassy forwards the visa application and waiver request to the DHS, it will be reviewed. If the DHS then denies the waiver, the file is closed. Approval means that the file is forwarded and DHS has final ruling.

Note that the waiver applies to nonimmigrant visas. It must be made very clear by the Applicant that they have no intention of immigrating to the U.S., by demonstrating that they fully intend to return home when their visa expires. Again, the use of a legal expert is such a wise choice.

Work Permits for Specialty Occupations H-1B

The H-1B visa is also known as the "Person in Specialty Occupation" visa. It is described as a visa for those who want to enter the U.S. to work in a specialty occupation and it requires a higher education degree or its equivalent.

Just as is the case with all work-related visas, the H-1B has specific requirements that must be met to qualify. The United States Citizenship and Immigration Services (USCIS) lists these requirements as:

- Showing an employer-employee relationship with a petitioning U.S. employer - What this means is that you must have a relationship in which your U.S. employer has the power to hire, pay, fire, supervise and control the work you do while in the country through the H-1B visa
- The job must qualify as a "specialty occupation" under at least one of the specific criteria - These criteria are:
 - 1) A bachelor or higher degree is required to do the job
 - 2) The complexity of the degree necessary for the work means it may only be done by someone with at least a bachelor's degree in a field related to it
 - 3) The employer usually demands a degree for that job or
 - 4) The nature of the work is so complex that the knowledge essential to the work is normally associated with an advanced degree (at least a bachelor's)
- The job must be in a specialized occupation that relates to the field of study of the foreign worker (i.e. you and/or the employer may provide evidence that similar companies in your industry or field require similar degrees for the job you will do on the H-1B visa)
- You must be paid the prevailing wage
- There must still be an H-1B visa available (unless there is no limit in your field). Typically, there is a cap of 65,000 visas in the H-1B category. According to the USCIS website, "Cap numbers are often used up

very quickly, so it is important to plan in advance if you will be filing for an H-1B visa that is subject to the annual H-1B numerical cap."

If your work qualifies under these requirements, then your employer must submit the proper documentation for certification. This is known as a Labor Condition Application (LCA) and is submitted to the Department of Labor.

Obviously, there are many significant issues related to this matter and it is always best to work with an experienced immigration lawyer to facilitate the entire process. There is a great deal of documentation required from both the employer and employee and it is best that a qualified professional provides support along the way.

Work Permits for Treaty Traders and Investors E-1 and E-2

Though many in the world are familiar with trade agreements such as NAFTA, not everyone realizes that the United States historically has established treaties with a long list of countries to engage in trade and promote commerce. If someone would like to enter the United States because of one of these trade treaties, they must apply for a nonimmigrant visa under the appropriate categories.

We will review the E-1 and E-2 visas, which are also described as the Trader (E-1) and Investor (E-2) visas.

Treaty Trader and Treaty Investors appear quite similar at first glance. For example, the U.S. State Department provides examples of the types of enterprises that are accessed by those with the "E" visas:

- international banking
- insurance
- transportation
- tourism
- communications

Generally, those granted E visas will be entering the country to engage in "substantial" trade that is principally between the treaty country and the US, or entering to begin building and directing a firm in which substantial capital is invested. Trade has been defined as the international exchange of goods, services and tech.

Where they differ substantially between E-1 and E-2 is in the type of work done. The E-1 requirements are as follows:

- Ownership or title of the items must pass from one party to the other
- Being from a treaty country (the list of which is available at the State Department web page for treaty information)
- As this is a "trading" treaty visa, your firm must have the nationality of the treaty country (i.e. 50% of the enterprise must be in the hands of people of the treaty country's nationality)
- The trade (international) must be substantial
- The E-1 visa Applicant must be an essential employee at a supervisory or executive level or they must have specialized skills essential to operations

The E-2 requirements, which are for investors, are similar in tone, and include:

- The visa holder must have citizenship in the treaty country
- Half the business must be owned by persons of the treaty country's nationality
- The investment (international) must be substantial, committed and irrevocable
- Investment must be in a real enterprise, and a "paper" organization will disqualify a visa approval
- The investing must generate substantial economic impact to the United States
- The investor must have control of the funds and the funds must be at risk

- The visa Applicant must be heading to the U.S. to direct or develop the company. If not, the principal investor, the Applicant must be an essential (highly specialized, executive or specialized capacity) employee

We strongly recommend that anyone hoping to travel to the U.S. on an E-1 or E-2 visa, should speak with an immigration expert ahead of time and work with them to obtain the proper travel documents and classifications.

Employer Compliance Review Services

In addition to providing services on Canadian and the United States Cross-border immigration law matters, Ackah Business Immigration Law can assist you to prepare for a Compliance Review/Inspection and ensure that your organization complies with Immigration, Refugees and Citizenship Canada's Temporary Foreign Worker Program (LMIA) and the International Mobility Program (IMP) (LMIA exempt) requirements - before you receive a call from the government - Be Prepared.

Immigration Compliance Audit Services

After an exhaustive process, you finally have the skilled workforce and your business needs. Now, the Canadian Government is implementing an aggressive compliance regime, which could include reviews and inspections at your place of work. Compliance reviews will be focusing on the attestations and declarations made on the LMIA forms under the Temporary Foreign Worker Program as well as the Offers of Employment made under the International Mobility Program. You need to ensure your business remains in compliance with the terms of the programs at all times. If you are selected for a Compliance Review, are you prepared?

Did you know that the 2015 increase of the Alberta Minimum Wage affected the terms of some LMIAs? Do you know how to ensure you remain in compliance with the prevailing wage for the location where your Temporary Foreign Workers work? Do you know how long you are required to keep all documents and information regarding your Temporary Foreign Workers?

If your organization obtained an LMIA or employed workers through the International Mobility Program with an Offer of Employment on or after December 31, 2013, Ackah Business Immigration Law can assist you before a Compliance Review is initiated, by:

- Reviewing initial Offer of Employment/LMIA for compliance with Federal, Provincial and Territorial Employment and Recruitment legislation at the time the offer was sent
- Assessing Offer of Employment/LMIA and comparing the terms to current Federal, Provincial and Territorial Employment and Recruitment legislation to ensure continued compliance
- Reviewing the current position description and comparing it with the duties described in the initial Offer of Employment/LMIA as well as the actual current duties performed by the TFW to ensure compliance with ESDC
- Providing a tracking document to assist you in maintaining information that ESDC will require in the event of a Compliance Review/Investigation
- Providing a checklist of documents that are commonly requested during a Compliance Review
- If there is a risk of non-compliance, we will provide suggestions for you to rectify
- Reviewing the public domain to ensure your company's digital presence reflects continued engagement in the business activities indicated in the Offer of Employment
- Ensuring policies are implemented to ensure the conditions of the workplace are compliant with all standards (free from financial, sexual, physical and psychological abuse)

Employment Law and Human Resources Advisory Services

To further assist our clients, we are now offering employment law and human resources advisory services to assist clients with planning for terminations, layoffs and drafting employment and consulting agreements to ensure you are well protected. We are pleased to have on our team experienced employment and labour lawyers and human resources consultants that will be contracted with us to assist our clients.

Ackah Law can now provide advice on employment related matters such as:

- Recruitment and Hiring Practices
- Termination and Severance
- Workplace Investigations
- Employment Policies & Practices
- Privacy Obligations
- Human Rights Requirements
- Absence & Disability Management

Whether your workforce is large or small, Ackah Law can provide strategic counsel to navigate workplace challenges and help your workforce meet its full potential.

Conclusion

This Guide is intended to help make sense of immigration law to corporations with an international workforce and to individuals planning to travel or migrant to Canada or the United States of America. While the contents cover legal information, it is beyond the scope of this Guide to cover all immigration law matters in Canada and the United States of America and should not be taken as a legal advice or opinions of any kind. The process of migrating and/or travelling to either Canada or the United States of America is increasingly driven by economic factors. Therefore, if you have concerns about any of the issues raised in this Guide, you may want to consult with an expert who can help you navigate the process. You can also contact **Ackah Business Immigration Law at (403) 452-9515 Ext. 107 or 1-800-932-1190 or email us directly at contact@ackahlaw.com** and we will assist you with crossing borders seamlessly.

We look forward to hearing from you. Let us know how we may be of assistance and how you can leverage our expertise in helping to meet your business needs. Should you wish to discuss any questions arising from this book, we encourage you to contact our office. Please note that this immigration book has been created for informational purposes only and cannot be relied upon as legal advice.