

Don't assume you'll be admitted to U.S. as a Business Visitor

By [Elizabeth M. Klarin](#)

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Years ago, I heard a statistic reporting that Toronto Pearson airport's Pre-Clearance Operations, run by U.S. Customs and Border Protection, saw more business visitors annually than any other port of entry to the U.S. This is unsurprising considering the more than \$14 billion in trade of goods and services annually between the two countries.

There are a few nearly universal requirements for someone to be admitted to the U.S. as a visitor. He must have a foreign residence to which he plans to return. He also cannot be paid for his U.S. activities from a U.S. source; this would compel foreign employees of a U.S. company to obtain work permits for simple meetings in the U.S. As described below, however, simply being paid from Canada will not guarantee B-1 status if the traveler wishes to enter for activities that disqualify him.

U.S. B-1 Business Visitor regulations report on permissible activities, such

as selling foreign-made goods, conducting market research and distributing goods. They do not show when someone fails to qualify. Because commentary on failing to qualify provides value in this analysis, I will provide some examples here.

A B-1 applicant to the U.S. will fail to qualify for admission if an officer believes she plans to work in the U.S. I frequently refer to the word "w-o-r-k" as a four-letter word at the border. Many officers will describe work as "anything for which someone normally gets paid." This precludes those who think they can skirt work permit requirements by getting paid outside the U.S., getting paid in U.S. dollars, or volunteering their services.

Another more formal test applied by U.S. Customs and Border Protection officers is to require a work permit for those whose U.S. activities will have an impact on the U.S. labor market. If a business will have to hire a worker in the U.S. if the foreign national does not come to the U.S., those activities and that foreign national will require a work permit.

These two concepts of work, and when a work permit is required, clash in a few places. It does not answer the concerns of one who wishes to take a working U.S. vacation, when the beneficiary of the services is a Canadian employer — as is the case for many Snowbirds, for instance. It also leaves people in a grey area who accompany a working spouse to the U.S., and plan to continue to provide working services to a Canadian company while they are physically in the U.S.

Another consideration in determining if someone qualifies as a Business Visitor is identifying who is the beneficiary of the activities. If the traveler is checking on her Canadian employer's subsidiary to ensure its U.S. office is maintaining the high standards of the parent organization, the beneficiary of the activities is the Canadian company and the visitor can likely qualify as a B-1. If the Canadian worker is hiring staff in the U.S. or filling in for a U.S. company at a trade show, he will likely not qualify for B-1 status.

Finally, it is important to consider the case of the Hong Kong tailor, Matter of Hira (U.S. Board of Immigration Appeals decision in Matter of Hira, 11 I. & N. Dec. 824). The act of coming to the U.S. to take measurements for suits to be sewed abroad was found to qualify the Hong Kong tailor as a B-1.

Other areas where this might apply is in the advertising field or design industry. When a traveler enters the U.S. to pick up specifications or to deliver a plan based on work completed outside the U.S., the traveler can qualify as a Business Visitor.

Defining who is not a Business Visitor takes a knowledge of the law, immigration climate and the current policies adhered to by ports of entry. In a time when U.S. immigration processes are becoming more difficult to navigate and fraught with pitfalls, it can be beneficial to consider facilitative work permits for workers who may appear to meet B-1 requirements but are at risk of being denied entry and/or told that they require work authorization.

By obtaining a work permit proactively, business travelers may avoid having to defend against enforcement action and miss critical business meetings if found not to meet the B-1 Business Visitor requirements.

Eileen Martin is a partner and the Immigration Practice Team co-leader at Lippes Mathias Wexler Friedman LLP. She has more than 20 years of experience in immigration law assisting clients from around the world with various matters including work permits, employment-based immigration, port- of-entry issues, visa issuance, family-based immigration, immigrant and nonimmigrant waivers, and assessment of U.S. citizenship.

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