

NEXUS surprise: Renewals could trigger need for U.S. work authorization

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The NEXUS program is a wonderful opportunity for Canadians travelling to the U.S. to avoid the long lines and overall anxiety of Customs and Border Protection (CBP) inspections at land borders and pre-flight inspections at airports. This is especially true for business trips in the busy summer months, where many NEXUS card holders take advantage of entries to the U.S. with little or no delay.

In addition to time savings, some travellers enjoy the added benefit of avoiding potentially inconsistent interpretations of their business activities in the U.S. NEXUS is a pre-screened process for trustworthy travellers, so individuals feel that their intended purpose for entering the U.S. has already been vetted through the NEXUS review. Unless identified for a selective or random secondary inspection referral, many NEXUS travellers do not receive any questioning.

This gold standard feeling can receive a jolt though when NEXUS card holders apply for their renewal. In some cases, “taking advantage of NEXUS” may be used pejoratively by CBP as they inquire more about a person’s travel history when renewing NEXUS cards. It is common for CBP to now judge someone’s activities in the U.S. differently, or the individual’s activities may have changed since the initial NEXUS card was approved. In either scenario, more and more NEXUS renewal applicants are being told they need to apply for U.S. work authorization before being approved for a new NEXUS card.

This can be a shock to individuals who have been travelling for years without issue. They did not realize that the NEXUS renewal process places all of their entries and activities in the U.S. under a microscope. It forces an individual to take a crash course in the alphabet soup nonimmigrant visa system and to consult with an immigration attorney to avoid future denied entries, or worse — an expedited removal order at a land border could lead to a five-year or lifetime bar to entering the U.S. The anxiety they hoped to avoid with the NEXUS card is now palpable.

Deep breath time. Repeat a yoga mantra. All is not lost.

In reality, the NEXUS renewal process probably brought to the surface what would have been identified at some point anyway — the fact that someone’s activities in the U.S. are beyond what is permissible for a business visitor. The definition of “work” under U.S. immigration law can be slippery. For example, CBP often views someone who has direct reports in the U.S. as needing work authorization even just for periodic visits to check on staff and operations.

In our current shifting U.S. immigration landscape (imagine the ground moving beneath your feet on a daily basis), individuals would be wise to find terra firma and address the need for work authorization in the U.S. before being surprised during the NEXUS renewal process. The good news is that this can be accomplished by consulting with an experienced immigration attorney. The bad news, of course, is that this means speaking with an immigration attorney — it is really not that bad.

That gold standard feeling and ease of travel can be recaptured with obtaining the proper employment authorization. Many work authorization approvals can be for either three- or five-year durations, which makes entries during those validities painless once again. It can also provide greater flexibility for what someone is allowed to do in the U.S. This unexpected aggravation can actually be an opportunity to expand business opportunities in the U.S.

If work authorization is required, four nonimmigrant options to evaluate include the L-1, E-1, E-2 and TN. Each has pros and cons depending on the individual's specific background and needs.

The L-1 can be obtained right at a port of entry and may be applicable if the individual works for a business that also has a U.S. location. The E-1 is obtained through a U.S. consulate and is a great fit for some individuals who have clients or engagements in the U.S. The E-2 is also obtained through a U.S. consulate, and it is generally known as an "investor visa." It can be applicable in a number of different situations, including if an individual or company invests money to start or acquire a U.S. business. Lastly, the TN can be obtained at a port of entry or a USCIS Service Center, and this can be a good option for professionals in certain fields performing services for a U.S. entity.

One work authorization category is not inherently better than another, and in some cases an individual may qualify under a few different options. The key is to understand what is right for short and long-term needs and to determine which one will give the peace of mind desired for U.S. travel needs.

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