

U.S. Immigration Options for Canadian Professional Speakers



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Three Visa Options for Professional Speakers: TN, O-1 & E-1

Many Canadian professional speakers avoid U.S. engagements because of the confusion surrounding obtaining proper work authorization. The uncertainty of actually “getting in” causes many individuals undue stress and anxiety. The concern is not only about not being able to meet a specific commitment, but also about creating problems for future entries into the U.S.

Expanding your engagements into the U.S. marketplace does not need to cause such consternation. There are options that allow you to expand your reach into the U.S. and even branch out into additional services and activities. The proper immigration strategy can alleviate headaches and turn a perceived problem into future opportunities.



Finding appropriate and applicable non-immigrant work visa options for Canadian professional speakers can be tricky. However, there are some options available which can provide you with the flexibility to work for several different clients across the U.S.

Three common visa options to evaluate for Canadian professional speakers include the TN, O-1 and E-1. One is not inherently better than the other. There are pros and cons to each depending on the individual's specific facts and plans.

Eliminate the Unknowns and Turn a Perceived Problem Into Future Opportunities.

TN Under NAFTA

One potential nonimmigrant (nonimmigrant just means temporary) option for a Canadian professional speaker is under NAFTA through TN status. NAFTA allows for certain professionals to perform work in the U.S. and qualify for TN status if their activities fall under certain occupational classifications. One of the occupations listed is Management Consultant.

The Legacy INS Inspector's Field Manual describes a Management Consultant as someone who “provides services which are directed toward improving the managerial, operating, and economic performance of public and private entities by analyzing and resolving strategic and operating problems and thereby improving the entity's goals, objectives, policies, strategies, administration, organization, and operation. Management Consultants are usually independent contractors or employees of consulting firms under contracts to U.S. entities.”

An individual must possess a Bachelor's degree in a related field or at least 5 years' of related experience.

While some speakers utilize the TN for engagements in the U.S., I do not view it as a reliable or sustainable strategy. Many times success can depend on the CBP Officer adjudicating the case.

Pros: A TN may be obtained at relatively quickly at any port of entry. It is not a paper intensive process.

Cons: The Management Consultant occupational classification is not a perfect fit for a speaker. Management Consultant TNs can be highly scrutinized by CBP Officers. The TN is employer/engagements specific. A new TN is often needed for new engagements. TN approval for one engagement does not mean future TNs will be approved. It can be unpredictable.

O-1

Another potential nonimmigrant option for a Canadian professional speaker is O-1 status. The O-1 nonimmigrant visa is for the individual who possesses extraordinary ability in the sciences, arts, education, business, or athletics. Extraordinary ability in the fields of science, education, business or athletics means a level of expertise indicating that the person is one of the small percentage who has risen to the very top of the field of endeavor.

To qualify for an O-1 visa, the beneficiary must demonstrate extraordinary ability by sustained national or international acclaim and must be coming temporarily to the United States to continue work in the area of extraordinary ability.

In general, an individual must have a U.S. sponsor to qualify for an O-1. For example, a sponsor could be a Speaker's Bureau or an agent.

Pros: The O-1 may be approved for 3 years at a time. It is not engagement specific. You may meet any engagement for speaking or related work in your field that is coordinated through your sponsor. This can be a good foundation for building up engagements in the U.S.

Cons: In general, the O-1 requires sponsorship. Engagements therefore need to be run through the O-1 sponsor. This can restrict growth for different opportunities in the U.S.

E-1

Perhaps the most appealing option, when applicable, the E-1 visa is yet another potential nonimmigrant option for a Canadian professional speaker.

E-1 treaty trader status is afforded to an individual who engages in trading activities (e.g. speaking engagements) between their home treaty country (Canada) and the U.S. The key concept is that the individual must be engaging in substantial trade between their home treaty country (Canada) and the U.S. Substantial trade can be defined as a significant (51% or more) portion of the individual's foreign sales (revenue from outside of Canada) and involves the transfer of goods and/or services (speaking engagements).

In essence, the individual must show that more than 50% of their total work outside of Canada is with clients in the U.S.

There can be a chicken and egg dilemma with the E-1. U.S. immigration will want to see a history of engagements in the U.S., but you would need E-1 status to enter the U.S. to serve those engagements. To address this issue some speakers initially obtain TN or O-1 status to build up their engagements in the U.S., or they are able to show enough future work going forward to support the E-1 through contractual engagements, letters of intent, etc.

The E-1 visa can approved in 5 year increments and allows for work at multiple locations, for multiple clients, in various activities etc.

Pros: The E-1 may be approved for 5 years at a time. You do not need a sponsor and you are free to engage in a wide variety of activities. The E-1 provides the most independence and flexibility for opportunities and growth in the U.S. E-1 processing is favorable at the U.S. Consulate in Toronto.

Cons: The E-1 does not allow an individual to primarily reside in the U.S. year round. It is for individuals who plan to continue to live in Canada but do business in the U.S.



Conclusion—Strategic Planning for Your Case

Before choosing a nonimmigrant category to pursue, an individual should first plan out business goals. U.S. immigration is similar to chess in that you must always be thinking 2-3 moves ahead. What may seem appealing as a short-term option, may close the door on future opportunities. The proper immigration strategy depends on the needs and characteristics of each individual. While a TN may be a perfect fit for someone who needs to complete an engagement quickly, an O-1 or E-1 may be better for future work. When analyzing the proper immigration strategy to implement in any case, one should follow this simple process:

Write down your short-term and long-term goals for the U.S.

Write down the facts of your personal and professional situation—**U.S. immigration is fact specific**

Analyze immigration processing times with your time frame requirements

Pick a category that best matches your needs and credentials

After picking a category, plan out 3-5 years in advance to see if it imposes any restrictions on you

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