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CROSS BORDER TAX AND UNITED STATES LEGAL SERVICES

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Pilot Program for Canadian L-1 Nonimmigrants

The USCIS California Service Center (CSC) and the U.S. Customs and Border Protection (CBP) Blaine, Washington, port of entry (POE) announced on March 30, 2018, that they will implement a joint agency pilot program for Canadian citizens seeking L-1 nonimmigrant status under the North American Free Trade Agreement (NAFTA). This pilot is designed to facilitate the adjudication and admission process of Canadians traveling to the U.S. as L-1 nonimmigrants and will run from April 30, 2018, until October 31, 2018.

L-1 admission is for intracompany transfers into the U.S. of managers, executives, and specialized knowledge employees who have been working outside the U.S. for a Canadian or other foreign company. Under NAFTA, Canadians may apply at the border for admission as an L-1, bypassing the service center filings and visa applications at U.S. consulates that apply to nationals of countries other than Canada.

Until now, the procedure for such application has been a same-day process in which the employee files the employer's Form I-129 Petition for Nonimmigrant Worker with supporting evidence at a Class A POE, where the petition is adjudicated and admission granted or denied all in one procedure at the POE.

Under this new program, petitioners (the employer) will first submit the Form I-129 and supporting evidence to CSC by mail or courier using a cover sheet annotated "Canadian L" to ensure quick identification. USCIS and CBP encourage participating petitioners to make the initial filing with the USCIS as early as possible to avoid delays. **This will not be a same-day process** since a CSC approval will be needed ahead of the grant of admission by CBP at the port of entry. The announcement contained no specific information about processing times.

Once the petition is approved, applicants must bring a copy of the Form I-129 approval to the POE at Blaine. The POE will continue to make the final admissibility determination. If the applicant appears at Blaine with only the I-129 receipt notice before USCIS has adjudicated the petition, there "may be delays while USCIS remotely adjudicates the form."

Although participation in the pilot program at Blaine is voluntary, it is "strongly encouraged" by USCIS and CBP. Any petitions filed at Blaine during the pilot period without the USCIS pre-filing will be adjudicated not at Blaine, but at the closest Class A POE optimized for L processing. Those stations are Point Roberts, Sumas, and Vancouver.

The stated purpose of the program is to facilitate Canadian L filings. At the conclusion of the six-month pilot, the agencies will determine the program's efficiency and shortcomings in order to improve the process. The expectation is that the goal is to expand this program.

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During the pilot, Canadian applicants can, of course, choose not to apply at Blaine at all. They may still apply for admission at any optimized Class A CBP POE or at an airport pre-clearance site, such as in Detroit at the Ambassador Bridge or Detroit-Windsor Tunnel.

There is still much more to know about how the pilot program will work particularly with regard to fees and timing. The question whether to apply for L-1 admission through the pilot program or another procedure will vary depending on the facts and circumstances of your case and the options available at the time.

If you have any questions about L-1 intracompany transfer visas or U.S. immigration in general, please do not hesitate to contact Michael Kennedy at mk@ingenuitycounsel.com or 519-252-3888.

About Ingenuity Counsel & Michael Kennedy

Ingenuity Counsel, based in Windsor, Ontario, Canada, provides cross border tax & United States legal services to Canadians. Michael Kennedy, with 15 years of legal experience, and his team at Ingenuity Counsel Incorporated, assist companies and entrepreneurs with immigration, business, real estate and tax matters in the U.S. With his expertise, he is able to walk clients through the process of successfully setting up their business in the United States. Additionally, Ingenuity Counsel advises clients that own property in Florida, Michigan, Arizona & California with respect to income tax, estate planning & administration matters. Michael also handles wills & trusts, powers of attorney and probate administrations. Whether you have real property, financial accounts or business assets located in the United States, Michael and his team can help.

Michael is admitted to practice law in California & Michigan and permitted by the Law Society of Upper Canada to provide U.S. legal services in Ontario as a Foreign Legal Consultant. Prior to establishing Ingenuity Counsel in 2012, he practiced law in the United States for more than 10 years in California, Michigan and Florida. Michael has a U.S. law degree (JD) from Western New England University School of Law and his master of laws degree (LLM) from Georgetown University Law Center in Washington DC.

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