

## Be warned: 'Work' a 4-letter word at border

The majority of the one million-plus people seeking entry into the United States and Canada daily are either business visitors or tourists. To enter the U.S. as a business visitor requires either a B-1 visa or the categorization of "B-1." To enter Canada, either a visitor visa or categorization as a "business visitor" is required.

Both countries face the challenge of facilitating legitimate entry swiftly and seamlessly while blocking those without proper permission, as well as potential security threats. Officials often err on the side of intense scrutiny and sometimes deny entry to the wrong people for the wrong reasons.

At the crux of this issue are the rules for what is permitted, how long a visitor can stay and how a business visitor is defined.

Here's an example: An engineer from a Canadian company seeks to enter the U.S. to meet with prospective clients to eventually sell services. When asked by U.S. authorities the purpose of the trip, she might state, "I'm going to work in the U.S." This could result in denial of entry. However, if the answer was, "I'm meeting with a potential client in the U.S. to sell my company's services," chances are she'd be admitted. "Work" is a dirty four-letter word.

Immigration authorities confuse travelling "on business" and "for work." The U.S. State Department's *Foreign Affairs Manual* publishes guidance notes for its officers. The 32-page note on temporary visitors uses many euphemisms to describe work, including "legitimate activities relating to business," "attend a meeting of the board of directors" or "perform other functions."

The manual cites a Board of Immigration Appeals decision involving a tailor measuring customers in the U.S. for suits to be manufactured and shipped from outside the U.S. The decision states this was "an appropriate business visitor activity because the principal place of business and the actual place of accrual of profits, if any, was in the foreign country." The decision is correct. But if asked whether he



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was working in the U.S., the tailor would answer, "yes."

This avoidance and misapplication of the word "work" gives rise to numerous problems when entering the U.S. The business traveller should, at all costs, avoid that word.

By contrast, Canada's business visitor classification facilitates the entry of people who intend business or trade activities. In fact, Canada's *Temporary Foreign Worker Guidelines* preface the term business visitor as "work without a work permit."

### The visa issue and length of stay

A source of confusion for Canadians entering the U.S. and Americans entering Canada is visas aren't required by either country for pleasure trips or most work statuses.

In general, travellers to Canada must obtain visas at a Canadian consulate or embassy abroad prior to travel. The U.S. has the same general rule. However, there is a U.S. visa waiver program for numerous countries, granting stays without a visa for up to 90 days, and Canada has reciprocal visa exemptions with many countries.

As for how long a Canadian or U.S. stay can be, as either a business visitor or a tourist, Canadian regulations are clear: Unless Canadian border patrol officials limit the stay, a person may stay in Canada for

six months from the date of entry.

Entry into the U.S. is not as simple. It's a common misperception a person entering the U.S. who is not limited by an entry document may stay for up to six months. However, most Canadians can stay in the U.S. for more than six months without a visa — up to one year — while others are generally limited to six months.

The overriding principle in entering both Canada and the U.S. is one must not intend to change country of residence — one must truly be visiting.

### Cranky borders

Business travellers may feel the Canadian and U.S. borders have tightened up exceedingly, travelling has become increasingly more difficult, questions are more wide-ranging and detailed and people are subjected to "secondary" inspection much more frequently. While we have no statistics on this, it seems true based on frequent reports.

An example is a Canadian engaged to an American citizen who was on her way to see him for one week. She had shipped goods to the U.S., anticipating obtaining a U.S. work permit a few weeks later. Not only was she denied entry to visit her fiancé, she was judged to be "fraudulently misrepresenting a material fact" and barred from the United States for life.

Why the crankiness? Immigration officers seem to be torn between security and facilitation. No immigration officer wants to admit a terrorist and they are saying, "no" more frequently than in the past. Secondly, immigration offices are often understaffed. Officers are overworked and frequently have insufficient guidance, particularly on the U.S. side.

Immigration officers have a "keepers of the gate" mentality on both sides of the border. They can often be heard saying, "Why can't an American (or, in Canada, a Canadian") do this job?" This question is completely inappropriate in the context of the North American Free Trade Agreement, which exempts labour market consider-

ations. Especially when the economy is weak, there's a reluctance to admit people perceived, rightly or wrongly, as negatively affecting the economy.

Business travellers should state the truth and state it succinctly. When tak-

ing a trip to the U.S., you are not going to "work." Business meetings, client visits, negotiating contracts, furthering international sales are allowable phrases. When working, always be working for the foreign employer.

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