

## **HOW TO VISIT THE UNITED STATES OR CANADA**

### **INTRODUCTION**

The United States and Canada welcome millions of visitors from around the world every year. Although a mere visit to one of these countries may seem fairly innocuous, it is in fact governed by a complex set of rules defining what can and cannot be done. This article will give an overview of the rights, obligations and procedures involved in a visit to the US or Canada, and will look at some of the similarities and differences between the two nations in this area of immigration law. The article deals only with non-business-related visitors, such as tourist and family-type visits. A separate article will discuss business-related visits.

### **VISITING THE UNITED STATES**

#### **Overview**

Visitors to the United States require a non-immigrant visa, unless they fall under the Visa Waiver Program or are exempt from the visa requirement under multinational agreements such as the North American Free Trade Agreement (NAFTA). A non-immigrant visa is a physical entry document designed to authorize a certain activity for a specific, limited time. It can only be obtained at a US embassy or consulate outside the US, but can also be taken away by any US immigration officer if it is abused. The usual visa for a visitor is a B2 visa, which is issued for those traveling for pleasure or medical treatment. There are no quota restrictions on the visa, and it can be issued quickly in most countries. The expiration date on the visa designates the period of time in which a visitor can enter or re-enter the country, not the length of a stay itself. The length of a stay is determined on entry and recorded on the visitor's I-94 card. Most visas allow for multiple entries, although some allow for only a single entry. A B2 visa does not permit one to work or operate a business in the US.

#### **What To Expect When Applying For A Visitor's Visa**

Visiting the United States is a two-step process: applying for a visitor's visa at a foreign consulate (preferably the applicant's home consulate), and examination at the entry point of the US. Thus the visa does not guarantee entry to the United States; it is a "preliminary finding" of eligibility to enter as a visitor. A visa application requires documentation and probably an interview. Getting a visa requires proof to immigration authorities that you will leave at the end of the trip. A visitor also needs to demonstrate financial independence, or that there is someone who is willing to take financial responsibility for him or her. There is no way to appeal a refusal, but one can always reapply as many times as one wishes.

At the port of entry to the United States, immigration authorities have the authority to deny admission, or to determine the length of time for which the visitor is authorized to remain in the country, which is noted on a stamp on the visitor's Record of Arrival-Departure. Immigration

officials can bar an applicant from entering the United States for five years if they discover the applicant was guilty of a fraudulent misrepresentation such as traveling on a forged passport.

### Qualifying to Visit

The main policy consideration that governs visitation is the concern that people may use it as a means of gaining entry to the US and then not leave. The presumption in law is that every applicant for a visitor visa has the immigrant intent to remain permanently in the US. A visitor must demonstrate that the purpose of the trip is for pleasure or medical treatment, and that he or she plans to remain only for a specific and limited period of time. The chances of success for a visitor increase if he or she has a residence outside of the US and other ties that will ensure an exit from the country at the end of the visit. Such ties might include ownership of real estate, a bank account, a letter from an employer referring to a job available on return, close family members remaining behind, or proof of registration for further studies at a school or university.

### Time Limitations

Under a visitor's visa with multiple entries, the number of trips that can be taken before the visa expires is not limited, but the length of each individual trip is. Tourists can usually stay for up to six months on any given visit.

### Extending the Length of a Visit

As with visa applications, extensions for a visit will require certain documentation. There are two ways of extending the length of a visit: one can leave the country and return for another six months, or one can apply for an extension from within the US as long as the entrance to the US was not made on a visa waiver and the total stay will not exceed one year. Usually, a visitor cannot get an extension of more than six additional months. Extension applications are normally approved within two months and, if the application is filed on time, the visitor will be permitted to remain in the United States until a decision is reached, even if the authorized stay expires in the meantime. Unfortunately, appeals on a rejected extension application make little sense from a time and cost point of view and are therefore of little use.

### Converting a Visit Into a Permanent Stay

It is important for prospective visitors to keep in mind that a non-immigrant visa will not lead to US citizenship. It also cannot be legally used to live permanently in the US. Although a visit can be extended by leaving the country and returning for an additional six months, immigration authorities are likely to notice if this is done repeatedly. Having a visitor's visa does not provide an advantage in a green card application, and applying for a green card after having entered the United States on a visitor's visa can raise questions about the original visa application. Foreigners who already have a green card application in process and who wish to visit the US may find it difficult, due to the perception that they will not leave when their trip expires.

## **VISITING CANADA**

### Overview

A visitor is a person who is legally in Canada for a temporary purpose, and who is not a Canadian citizen or permanent resident. Visitors to Canada, like students and workers, fall under the category of temporary resident, and receive a “temporary resident visa”. This visa can allow for multiple entries, or may be of the single-entry variety. Citizens of some countries do not require a visa to visit Canada. These are generally countries in the developed world.

### What To Expect When Applying

Applying to visit Canada is a two step process: one must obtain a visitor’s visa at the consular office abroad, and then be granted admissibility by the immigration officer at the border. Various documentation and processing fees are involved in the application process. During the visa application, the prospective visitor has to satisfy the visa officer that he or she does not have an immigrant intent with the application. There may be an interview to verify the reasons for the visit, the willingness to leave Canada, and to address questions of overall admissibility. At the border, the visitor must have a passport with a valid date, since a document is needed which allows re-entry to the visitor’s original country. The examination at the border ends when the visitor has been authorized to leave the port of entry and does so. In certain cases, a visitor could be let in (on the condition that he or she will report back at a future point in time) if the examination has not been completed.

A temporary resident application is given as much priority as is possible. Done in person, it may be completed that same day. While applicants are required to answer questions truthfully and to provide relevant evidence and documentation, certain requirements are also placed on immigration officials. For instance, officers must wait for an interpreter before interviewing or refusing an applicant. Additionally, as governed by the Canadian Human Rights Act, a refusal should be based specifically on the characteristics of the individual rather than generalities. The reasons provided for a refusal should be complete, and an applicant can seek redress at the Federal Court or Canadian Human Rights Commission.

### Qualifying to Visit

The principles behind admission to Canada are similar to those of the United States. A visitor has to satisfy similar criteria to be issued a visa, and must satisfy the immigration officials at the port of entry to the country. Based on various factors such as family ties, one’s employment in the home country, and financial independence, immigration officers have to be satisfied that the visitor is merely seeking temporary entry to Canada. At the border, one can be found inadmissible on various grounds, such as security, criminality, lack of financial resources, misrepresentation, or other. A visitor would be deemed inadmissible either at the port of entry, or would be referred to the Immigration Division for an inquiry.

### Time Limitations

A multiple entry visitor visa is valid for up to five years, or one month prior to the expiry date on the visitor's passport (or document that allows for re-entry to the visitor's home country), whichever is earlier. A single entry visa can be issued up to six months before the expected date of travel. Remember that a "visa" is merely a "preliminary determination of eligibility", not a right to enter Canada. Also note that the length of the stay itself is a condition that is imposed by the immigration officer at the port of entry, and is typically six months, unless affected by circumstances such as means of support, passport expiry, etc.

### Extending the Length of a Visit

A Canadian visitor can apply for a six-month extension up to 30 days before the expiry of the temporary visitor status.

### Turning a Visit to Canada Into a Permanent Stay

A visitor comes to Canada and is issued a temporary resident visa on the understanding that the visit is temporary, and that he or she will leave the country at the end of the stay. As with the United States, applying for entry to Canada under the guise of being a visitor and then applying for permanent resident status can lead to questions of fraud on the original visa application. Generally speaking, converting visitor's status to permanent status is not possible except for spouses of Canadian citizens and residents, or extraordinary humanitarian circumstances.

Those who have already applied for permanent resident status and who wish to visit Canada while their applications are pending may experience difficulty due to the suspicion that they will refuse to leave. This is not a grounds to refuse to issue a visitor visa, although the onus is on the visitor to demonstrate his or her validity to the visa officer. Generally speaking, an immigration official will look at factors such as the length of stay, ties in Canada, ties with the home country, financial independence, and so on, to make a determination.

## **COMPARISONS BETWEEN THE TWO COUNTRIES**

Canada and the United States have a lot of similarities and few differences in how they deal with their visitor applications. Both countries have different requirements for visitors than for those who wish to work. Both countries allow one to extend one's stay and even to alter one's temporary status from within the country in extraordinary circumstances. There is an onus to convince officials of the temporary nature of one's stay. The officials at the border of both countries wield significant power, in terms of laying out conditions for a visit and also in declaring inadmissibility. The period of stay for both countries is typically six months, visas exist for single and multiple entries, and converting a temporary stay into a permanent stay is a practice that is frowned upon and difficult. Both countries have a two-step process involving a visa application and an examination at the border.

Several differences exist between the two countries. In cases of fraud, the US bars entry for five years, while Canada only bars entry for three years. Applying for a visitor extension in the US involves applying before the time limit on the visit is reached, while in Canada one normally has to apply 30 days before expiration. While both countries allow court challenges to negative decisions, the cost of undertaking such litigation is prohibitive in almost all cases. Canada has the additional available remedy of a complaint to the Canadian Human Rights Commission.

## **CONCLUSION**

Canada and the United States provide fabulous opportunities for visits by citizens from abroad. However, the policy concerns of security and illegal immigration necessitate a watchful eye on all applicants by immigration officials. The approach taken to visitors by both countries is so similar that it may make sense to consider unifying the United States and Canada into one North American visitor immigration area to reduce duplication, maximize resources and improve security. In the meantime, however, it is in the best interest of a visitor to understand the steps involved in the application process.

This article was written by Andy J. Semotiuk jointly with Roman Kotovych.  
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