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Major Changes for Canadians Seeking to Extend Their L-1 Status

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Until recently, Canadians working and living in the United States as L-1 intra-company transferees could extend their L-1 status relatively easily, applying in the same manner they applied for their initial L entry with U.S. Customs and Border Protection (CBP). However, a new interpretation of the applicable regulations adopted by CBP at all ports of entry and pre-clearance locations in Canada has abruptly ended the status quo. Employers of Canadians in the U.S. in L-1 status need to be aware of this and plan accordingly.

Based on the North American Free Trade Agreement (NAFTA), which became effective in 1994, Canadians seeking L-1 status sponsored by a qualifying multinational company in the U.S. can petition for this non-immigrant classification in-person with CBP in Canada at a port of entry or at an airport with Pre-Flight Inspection. CBP adjudicates these petitions same-day, efficiently facilitating the transfer of an employee found to be critical to the sponsoring company's U.S. operations. This quick and straightforward processing is in line with the objective of NAFTA, to lessen the barriers between the U.S. and Canada to better enable and advance economic activity. Further, NAFTA's aim to reduce restrictions has further been fulfilled by the United States' elimination of the visa requirement for Canadian L-1 employees and their dependents in L-2 status to enter the country.

For years, Canadians routinely submitted petitions to renew/extend their L-1 status beyond the initially granted three-year period. Now, CBP is refusing to process any petition that can be considered a renewal or extension, referring to nuances within the controlling regulations that could apply in such instances. While there are legal arguments and sound logic supporting CBP's authority to adjudicate L-1 renewal or extension petitions for Canadians, the regulations do not prima facie grant CBP this power; conversely, it is explicitly granted to USCIS.

At first, in early 2019, only some ports of entry and pre-clearance locations had adopted this narrow interpretation of CBP's authority. Now it has been reported in place throughout all of Canada. There has not been an official policy announcement by CBP regarding this drastic departure from how they operated regarding this issue for years.

This is a major change for companies with Canadians working in the U.S. in L-1 status. Instead of sending employees on a quick trip to the border and back for their L-1 petition renewal, employers must now anticipate the more lengthy and involved process for petition extensions submitted to USCIS. Normal adjudication times are between 1.5 to 4.5 months,, according to USCIS's current estimates. Employers can expedite this by electing premium processing for an additional fee of \$1,410 that guarantees adjudication in 15 calendar days. However, this faster method may increase the chance of a Request for Evidence (RFE) being issued for the case.

Although an employee will remain in lawful status to live and work in the U.S. as long as an extension petition has been submitted to USCIS by the status expiration date, employees can face several problems. The validity of critical documents such as drivers' licenses are often limited to status expiration date and may not be able to be renewed until approval of status extension has been granted. Further, employees may not be able to travel abroad and re-enter with L-1 status if the extension has not been granted.

There are additional complications for companies that routinely have Canadian employees work in the U.S. on an intermittent basis. Consider this instance: An employee could have been working in Canada most recently, but if



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the employee has been in the U.S. in L-1 status within the past 12-month period, CBP now might consider the submission of an L-1 petition by that employee an extension and refuse to process it. Yet CBP in Canada is not taking this approach uniformly. At some ports and preclearance locations, CBP is processing petitions for L-1 holders who intermittently work in the U.S. as long as they maintain a residence in Canada and spend less than 50% of their time in the U.S.

Finally, this new practice by CBP may be more difficult to navigate for multinational companies that frequently transfer employees to the U.S. based on their Blanket L Approval. A petition under the company's Blanket L is one that an employee submits to a consular post abroad for adjudication by a consular officer who will also conduct an interview with the employee. The employee needs to wait only a few days before travel to the U.S. to allow the consular post time to issue a visa in the employee's passport. This process is favored by companies with a Blanket L Approval since it is more simple and efficient than first submitting a petition to USCIS. However, this is not a straightforward option for Canadians. Consular posts in Canada can be hesitant to adjudicate petitions for Canadian citizens submitted under a Blanket L given that: (1) they are unfamiliar with doing so, since these petitions have almost always been submitted to CBP; (2) petitions submitted under a Blanket are always considered "new" petitions, even if a person is extending his/her previously held L-status; and (3) Canadians normally do not require visas to enter the U.S. in L status, and this is a primary function of the consular post.

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