



GMS Flash Alert

Immigration Edition

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United States - Hurdles for Canadians Filing L-1 Petitions at U.S. Ports of Entry

In an abrupt change to existing policies and procedures, certain ports of entry (POE) along the Canadian - U.S. border are refusing to process L-1 renewal petitions presented by Canadians pursuant to the North American Free Trade Agreement (NAFTA). Instead, Canadian L-1 visa holders seeking work authorization extensions have been directed to file I-129 *Petitions for Nonimmigrant Worker* with the U.S. Citizenship and Immigration Services (USCIS).¹

Although U.S. Customs and Border Protection (CBP) has not officially published a change in policy, there have been numerous reports of this issue across several land border POEs and at pre-clearance locations at major Canadian airports.

WHY THIS MATTERS

Pursuant to long-standing practices for processing L-1 visa applicants under NAFTA, Canadian nationals were permitted to apply for admission at a Canadian-U.S. port of entry or CBP pre-clearance location, and concurrently request an extension of their L-1 work authorization. Adjudication of the L-1 renewal petition and request for admission was often made same-day allowing the Canadian L-1 visa holder to enter the U.S. and continue employment with the L-1 employer. This practice allowed Canadian L-1 visa holders and their employers to by-pass the step of first having to file an I-129 *Petition for Nonimmigrant Worker* and obtain petition approval from the USCIS, a process that is more costly and time consuming.

This is frustrating and administratively burdensome for these individuals seeking L-1 renewal petitions at the border, which has been the customary practice for many. Travelers on these visas, and their immigration counsel and global mobility managers, should be prepared for additional processing times and procedures in order to accomplish the work authorization extensions.

KPMG NOTE

The POEs and pre-clearance locations refusing to process L-1 renewal petitions are relying on legal provision, 8 CFR §214.2(l)(15)(i), which states that petitions for visa status and work authorization extension should be made by filing an I-129 *Petition for Nonimmigrant Worker* with USCIS.

That said, there are strong legal arguments supporting the position that this provision does not apply to Canadian L-1 visa holders appearing before CBP at a land POE or pre-clearance location. A prerequisite to filing an I-129 *Petition for Nonimmigrant Worker* with USCIS requesting extension of visa is that the beneficiary be physically present in the United States. However, Canadian nationals submitting L-1 petitions at a POE or pre-clearance location are not physically present in the U.S. but **seeking admission** to the U.S. and therefore are not applying for an extension of status. As such, there does not appear to be a legal basis for such refusals.

Despite strong legal arguments against such refusals, we continue to receive reports of refusals at various Canadian–U.S. POEs and pre-clearance locations, from both Canadian L-1 Blanket and Individual L-1 petition-based applicants. In light of this emerging trend, employers and Canadian L-1 applicants should seek the advice of immigration counsel to determine the best strategy for L-1 visa renewals.

KPMG LLP Law in Canada will endeavor to keep readers informed of developments as and when they occur.

FOOTNOTE:

1 See the USCIS [webpage](#) on “Operating Instructions \ OI 214 Nonimmigrant classes. \ OI 214.2 (l).”

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Contact us

For additional information or assistance, please contact your local GMS or People Services professional* or one of the following professionals with the KPMG International member firm in Canada:



Mira Khalid
Associate/Attorney,
U.S. Immigration
KPMG Law LLP – Tax + Immigration,
Canada
Tel. +1-416-943-7830
mirakhalid@kpmglaw.ca



Chelsea Hsieh
Senior Manager/Attorney
U.S. Immigration
KPMG Law LLP – Tax + Immigration,
Canada
Tel. +1-416-943-7874
chelseahsieh@kpmg.ca

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