

TORONTO, CANADA
U.S. CONSULATE GENERAL

*by David L.P. Garson and Lainie M. Appleby**

TIME DIFFERENCE

Toronto is on Eastern Standard Time.

KEY PERSONNEL

John Nay, Consul General
Jeffrey Tunis, Chief, Consular Section
Peggy Petrovich, Supervisor, Visa Unit
Julie Stinehart, Supervisor, American Citizen Services Unit

COMMUNICATIONS

Mailing Address

U.S. Consulate General Toronto
360 University Avenue; Toronto, Ontario M5G 1S4

Entrance

All consular customers must enter at 225 Simcoe St, between The Canada Life building and University Club building, parallel to University Avenue.

U.S. Mailing Address

U.S. Consulate General Toronto
P.O. Box 135; Lewiston, NY 14092

Telephone/Fax

Consulate Switchboard: (+416) 595-1700, no information is available through the switchboard operator and consular staff take no unsolicited telephone inquiries.

Fax: (+416) 595-0051/595-1090

Visa Unit Fax: (+416) 595-5466

E visa Fax: (+416) 595-0229

* **David L.P. Garson** is a partner with the Toronto-based law firm of Guberman, Garson, Bush, practicing solely and exclusively in the field of immigration law. He is the past chair of the immigration section of the Ontario Bar Association. Garson is a past chair of the Canada Chapter of the American Immigration Lawyers Association (AILA) and a past chair of the Canadian Bar Association Sub Committee, port of entry. The Law Society of Upper Canada certified Mr. Garson as a specialist in immigration law.

Lainie M. Appleby is a lawyer at Guberman, Garson, Bush in Toronto where she practices exclusively in immigration law. She is a graduate of the University of Western Ontario and received her Bachelor of Laws degree from Osgoode Hall Law School. Currently, she is an executive member of the citizenship and immigration section of the Ontario Bar Association. Appleby also is a member of the Canadian Bar Association, citizenship and immigration section, and member of the AILA Canada Chapter.

NVARS System: 1-900-451-2778 (in Canada)
1-900-443-3131 (in U.S.) or 1-888-840-0032

E-mail Addresses

Visa Unit: TRTNIV@state.gov

E visas: evisatoronto@state.gov

The consulate will accept E-mail inquiries and will reply to only those inquiries that it deems cannot be answered by an internet search. Visas will not be adjudicated or reconsidered by E-mail.

Websites

<http://toronto.usconsulate.gov>

NVARS System: www.nvars.com

General visa information is also available at three locations on the internet:

1. the Department of State (DOS) website: www.travel.state.gov,
2. the Consulate's website: <http://toronto.usconsulate.gov> or,
3. U.S. Embassy Ottawa's contracted website: www.amcits.com.

Visa information is also available by caller pays telephone at 1-900-656-2222 from the United States or 1-900-451-2778 within Canada at \$1.89 per minute.

The consulate has established a procedure for making available the E visa adjudication priority date at its website under "Visa Information" and, then, "Treaty Trader & Investor."

There are limited circumstances wherein expedited appointments can be requested. Please see the consulate's Visa FAQs Websites for details.

ATTORNEY REPRESENTATION AND OTHER ACCOMPANIMENT

There is no right to counsel at this post. Attorneys will not be admitted to the visa appointment area.

Applicants who are disabled or have no command of English, may be accompanied by one assistant or translator

UNLAWFUL PRESENCE BARS: DETERMINATIONS OF INADMISSIBILITY UNDER INA §§212(a)(9)(B)(i)(I) AND (II)

When this issue arises, the burden of proof is on the applicant to demonstrate that prior stays in the United States were of lawful presence. It is up to each applicant

and, therefore, the applicant's counsel to determine the most appropriate way of demonstrating this to the consular officials. Presenting proof of continuous lawful status such as I-94s, U.S. Citizenship and Immigration Services (USCIS) receipts and approval notices, school transcripts, I-20, employment authorization documents (EAD), pay stubs, and tax returns may be helpful.

Note that a waiver may be available in cases of inadmissibility due to an overstay; however, extensive submissions are required. It is our experience that the Consulate would only consider these cases in emergent circumstances.

NONIMMIGRANT VISAS

Processing Times and Procedures

NIVs are processed by appointment only. The consulate is closed on American and Canadian holidays (see the list of holidays below). All appointment confirmation letters note an appointment timeslot. The entrance for all visa and ACS customers is at 225 Simcoe Street. This is one block west of University Avenue and directly behind the University Avenue entrance. On Monday, Tuesday, Thursday and Friday appointments are in the morning and afternoon. On Wednesday appointments are morning only. On the third Wednesday of each month there are no visa services. All applicants and anyone else seeking entry to the Consulate are subject to screening by security guards. All dangerous articles, electronic items, food and liquids are forbidden entry. There is no storage onsite or nearby. From entry to departure, applicants should expect to be inside the consulate for at least two hours.

NIV appointments must be reserved via the National Visa Appointment Reservation System (NVARs). In order to book an appointment, log onto www.nvars.com. You will obtain a reference number for the applicant and enter the relevant biographical and immigration information. The appointment confirmation and reminder will arrive via E-mail. Be sure to clear your "spam blocker" to prevent this important message from ending up in your spam file.

Alternatively, an appointment may be booked by calling the NVARs telephone system. Once an appointment is made, the applicant will receive a letter confirming the appointment and a visa application package including an information sheet and a deposit slip for the application fee (USD \$131). Prior to the appointment at the consulate, the fee must be paid at a Scotiabank in Ontario, as the receipt for payment must be presented at the time of the interview.

The machine-readable visa (MRV) application fee currently USD \$131, is paid in advance at any Scotiabank in Ontario. The applicant will receive a deposit slip with the letter of appointment confirmation from the consulate. Upon payment of the fee, the bank teller will provide the applicant with three copies of the deposit slip. All must be presented by the client when attending the appointment at the consulate; the client's copy will be returned at the interview.

All visa applicants are seen by appointment only. Currently, some appointment spaces are reserved for third country national (TCN) applicants; however, this may not be the case in the future. There is a great demand for visa appointments by Canada-based applicants. The consulate makes 60 visa appointments per session, morning or afternoon, per consular officer on duty. Appointments are usually booked several weeks in advance.

As of April 1, 2002, TCNs found ineligible in Canada are not permitted to re-enter the United States on their current I-94. In this case, the ineligible applicant must return to their country of residence to apply for a visa. Additionally, the consulate will not knowingly accept appointments by TCNs who are citizens of countries that are state sponsors of terrorism. TCN visa applicants should be prepared to deal with the uncertainty, delays and costs inherent in applying and possibly being found ineligible outside of their home country.

For the petition-based applicants, eligible TCNs will receive a pick up slip for 4 workdays following the interview. For non-petition based visa applications, such as B, F, J, M or R, the pick-up time will be approximately 2 workdays later. Canada-based visa applicants receive visaed passports by courier or Canada Post express mail. Courier slips are available at the consulate and require a valid credit card. Visa applicants may also bring a pre-paid Canada Post express mailer to the appointment as an alternative.

All passports provided must be in good physical condition and valid from six months beyond the intended length of stay in the United States. Those applicants with status in Canada must have original evidence of such, as is required by the Consulate.

P.I.M.S (Petition Information Management Service)

Recently, the Department of State instituted the Petition Information Management Service, making all petition based nonimmigrant visa applications (H, L, O, P, Q and L) subject to an additional screening step at U.S. embassies and consulates. This requirement cannot be waived.

Therefore, at this time, when making an application for a visa pursuant to the aforementioned categories, an applicant is subject to further confirmation by the Consulate. This confirmation is processed in Washington DC. Normally it takes 4 workdays for an application to be confirmed. Applicants must now wait for an additional period of time in Toronto.

In certain circumstances, applicants may have to wait longer depending upon the speed of the confirmation process and backlog.

Note that individuals can assist in expediting this process when making an appointment through NVARs. When using NVARs, the applicants can provide their information in the hope of facilitating the processing in a

quicker fashion than if the applicant did not submit his or her personal information.

H, O, P, Q, and L Visas

H, O, P, Q, and L visa applicants must present the original I-797 approval notice, a copy of the complete I-129 package, including the LCA (for Hs), an up-to-date employer offer letter and university transcripts. The post will process H, L, O, and P visas on the basis of an original I-797 (not a photocopy or fax) sent directly to the attorney or employer from USCIS, along with an attorney-certified copy of the petition package. TCNs must be aware that in the event of a refusal, they will not be re-admitted to the United States.

Under Immigration and Nationality Act (INA) §222(g), the consulate will not issue NIVs to individuals who have previously overstayed a visa in the United States.

If an applicant has overstayed his or her I-94 card, then, the Consulate will not take jurisdiction of that petition. The person must then apply at their home post.

This is not the case, however, when the applicant has an I-94 card with a D/S annotation (F-1 or J-1 individuals for example). In these circumstances, even though the individual may no longer be participating in J-1/F-1 activities, the person may apply at the Consulate for a visa. However, the Consulate will exercise discretion in issuing the visa to the applicant.

Visas by Mail and Waiver

As of February 2003, the Visa Unit accepts applications by mail only from persons who are physically present and holding long term status (i.e. landed immigrant, worker or student) status in Ontario and who are over 79 or under 14 years old.

Note that in all circumstances, citizens of Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria must apply in person.

Additional Documents and Special Forms

As of January 10, 2007, the visa application form DS-156 must be data entered and printed out with a barcode before coming to the consulate. Handwritten DS-156s are unacceptable. Visa applications can be obtained online at: <http://evisaforms.state.gov/>. All applicants must provide a DS 156 and DS 157 form. Note that in Toronto, regardless of age or gender, the DS-157 must be completed and submitted with all other documents at the designated appointment time.

M, F, or J visa applicants also must complete and present DS-158, I-20, I-20M or DS-2019 along with the SEVIS receipt.

All applicants must provide one color photograph that is 2 in. x 2 in., against a white background, full face, without head covering and taken within six months of submission. If eyeglasses will reflect a photo flash, they must be removed.

For work visas such as H and L, where the applicant is renewing his or her visa status, original evidence to confirm continued employment, such as recent pay stubs, and an original and up-to-date employment letter should be provided. H applicants who are in their 6th year and are applying for year-seven must bring evidence of the pending immigrant visa (IV) or the labor certification from the U.S. Department of Labor that has been pending for one year.

Post Acceptance of USCIS Approval Notices, Cables or Attorney-Certified Copies

The U.S. consulate will process cases based on presentation of the original I-797 notice of approval.

For H and L visas, the consulate also requires that the applicant provide a copy of the I-129 petition with all supporting documents in addition to evidence of qualifications, including original transcripts. A copy of the labor condition application (LCA), employment letter indicating the nature and duration of the employment and salary, along with recent pay stubs are also required.

Policy on B-1 in Lieu of H-1

In all B-1 in lieu of H-1 submissions, the Consulate will require significant reasons why the individual requires this type of visa. The Consulate is well aware of the cap issue surrounding H-1 visas and accordingly, is fairly sensitive to this type of application. Each of these cases is carefully scrutinized.

The Consulate, however, has issued B-1 in lieu of H-1 visas in circumstances where it is convinced that the individual does qualify under the Foreign Affairs Manual guidelines. Be sure to include evidence of the individual's degree, resume, reasons for entering the United States, and information concerning the company. Also, place of remuneration is vitally important in this type of application. The NIV unit evaluates applications on a case-by-case basis.

Re-application Policy After Refusals

There is no limit to the number of times an individual may apply at the consulate, nor is there a required waiting period after an individual has been refused before another application may be submitted. However each visa applicant, initial or reapplicant, is seen by appointment only, made at www.nvars.com. It is not advisable to make a new application after having been refused unless new information is available or significant change to circumstance can be shown.

When the applicant is denied under §214(b) of the Act, it is very difficult to obtain a positive decision on a reapplication that is made shortly after the first.

The Non-Immigrant Visa Chief has taken the position that this is a discretionary decision made by the officer. Therefore, it would be very difficult to convince the Consulate that an error has been made.

The Consulate will refuse an application under §221(g) of the Act in circumstances where they do not feel qualified to make a decision in the case (for example, if they can not verify the authenticity of the documents or if they require further information). In this type of situation, there may be an avenue for a successful reapplication depending upon the specific circumstances.

If for instance, the Consulate requires documentation and invites the applicant to return with those documents, then reapplication may be not only possible but necessary. However, if the Consulate determines they cannot verify the quality of the document that the applicant from abroad maintains, they may decline a re-adjudication as they could not make an informed decision.

E Visa Processing

The U.S. Consulate General in Toronto processes E visa cases for Canadian citizens and landed immigrants of Ontario, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Quebec, and Saskatchewan. Since January 3, 2006, the U.S. Consulate General in Vancouver process E visas for British Columbia, Alberta and the Yukon. E visa processing takes approximately 6-8 weeks. Landed immigrants have the choice of applying in Canada or their country of nationality.

While E-applications can be filed by mail, all applicants must appear in person for fingerprinting and visa issuance. Original passports, marriage certificates and birth certificates are presented at that time.

Applicants must include a DS-156 and DS-157, the receipt of the MRV fee (previously paid at Scotiabank), each applicant's photo and DS-156E signed by the company owner, CEO, corporate secretary or another individual with signing authority for the company, and all supporting documents.

The E-visa unit has very specific requirements concerning formatting. Numbered or lettered divider tabs must be used. If there will be more than two subsections under a given tab, then a separate numbered or lettered tab should be used. Aside from including each document/exhibit as a tabbed section, the first two tabs should include a summary and table of contents, respectively. The following tabs should include exhibits addressing each of the E-1 or E-2 criteria. While the tabbed exhibits should be presented as a bound volume the DS-156, DS-157 and DS-156E should simply be clipped on top. The DS-156E form should also include a signed statement of temporary intent from the principal applicant. To the dependants DS-156 forms, copies of appropriate relationship documents such as birth certificate or marriage certificate must be appended.

Recently, the U.S. Consulate General has announced that copies of all pages of each applicant's passport must be provided. After the case is received, a fax or mail login letter is issued. Thereafter, all correspondence will go to the E-mail address noted at box 23 of the DS-156. This can only be changed by submitting a new DS-156.

Once the E visa screening is complete E visa applicants make an appointment with the E visa section. Passports are provided, and photos and fingerprints are taken. E visa appointments are in the morning, and every effort is made to have passports available for pick-up after 3:30 pm the next workday.

Small investments will require substantial documentation to prove substantiality and overcome the presumption of marginality. Refer to the *Foreign Affairs Manual* notes for details on complying with these requirements. It is critical to prove other assets and income apart from the business in small investment cases.

E visas are complex and involve issues of corporate, commercial, international trade and tax law in addition to immigration law. Most consular officers are not attorneys; thus, attorneys should review the E requirements separately and demonstrate how the applicant complies with each in a clear and concise manner. A well-organized presentation, not overly long but clear, including a detailed business plan for new businesses, is helpful to achieving the result a client needs. Very often, E visa applications are denied because of inadequate documentation.

The U.S. Consulate General will now be issuing "Notices of Company Registrations." For approved E-1 or E-2 cases. These registrations usually will be valid for three years, and are intended to make the process for subsequent applications more streamlined.

Practice Tips

There is great demand for visas in Toronto at all times. Summers and December are especially busy.

Recently, applicants attending the consulate in Toronto have been required to provide original degrees and certificates in almost all cases. Translations must be provided for non-English documents. Ensure that visa application packages presented to the consular officers are well organized and include the appropriate numbers of copies of petitions. Be sure to be prompt as the consulate is strictly enforcing appointment times. Applicants more than 20 minutes late or early may be turned away.

Additional fees, such as reciprocity fees, may be applicable depending on the type of visa application and the applicant's country of nationality. These fees are payable in exact US change or by credit card at the consulate.

POST-9/11 CHANGES

In addition to an increase in fees and the requirement for a DS-157 from all applicants, the most significant change in Canada took effect on March 17, 2003 when all landed immigrants/permanent residents of Canada who are citizens of the Commonwealth countries noted below, must have a passport that is valid for at least six months beyond the intended length of stay and a visa to visit the United States.

The countries affected are: Antigua and Barbuda, Bahamas, Bangladesh, Barbados, Belize, Botswana, Cameroon, Cyprus, Dominica, Fiji, Gambia, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Maldives, Malta, Mauritius, Mozambique, Namibia, Nauru, Nigeria, Pakistan, Papua New Guinea, Samoa, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Seychelles, Sierra Leone, Solomon Islands, South Africa, Sri Lanka, Swaziland, Tanzania, Tonga, Trinidad and Tobago, Tuvalu, Uganda, Vanuatu, Zambia and Zimbabwe.

This also applies to Hong Kong nationals holding British National Overseas or Hong Kong Special Administrative Region passports. Australia, Brunei, Ireland, New Zealand, Singapore and the United Kingdom are included in the Visa Waiver Program (VWP) for visitors traveling for business or tourism for less than 90 days. Note that if citizens of VWP countries do not have a machine-readable passport, they must qualify for a visitor visa even for trips of less than 90 days.

All applicants face more extensive background security checks. Biometric recognition and fingerprints are required of U.S. visa applicants worldwide. Any past criminal activity, even if pardoned or not prosecuted, can result in delays in processing and additional documents may be required. Applicants should really search their memories to list all prior arrests or U.S. visa/entry ineligibilities when completing the forms.

Other visa applicants, by virtue of their work, nationality, travel patterns or education may require lengthy clearances. Anyone with a high-tech background should bring higher education transcripts, a plain language explanation of their work/research, abstracts of papers or research and complete resume. This will assist in clarifying the nature of their potentially contentious background.

Anyone entering the consulate will undergo airport style security screening. The following items will be barred: Any electronic devices, including cell phones, pagers, car keys, computers, personal organizers, Blackberrys™, cameras, tools, sharpened utensils, weapons, dangerous items, food, liquids (including all drinks), luggage and bulky items. There is no storage onsite or nearby. All bags and parcels are searched. Barred items should be left in the applicant's hotel, vehicle or attorney's office.

IMMIGRANT VISAS

The U.S. Consulate in Montréal processes all immigrant visas. Toronto's website describes how certain U.S. citizen petitioners who reside in Ontario may file immigrant petitions (I-130s) initially by mail at the consulate. All other petitioners must file directly with USCIS by mail.

AMBIANCE—TRAVEL TIPS

Toronto is a safe city. It is serviced by Lester B. Pearson International Airport and all major North American and international airlines fly to Toronto. The consulate is located in the heart of downtown and can be reached on foot from the hotels mentioned below.

Hotels located nearby the consulate include the Hilton Downtown at 145 Richmond Street West, (+416) 869-3456 . <http://hilton.sites.toronto.com> or the Sheraton Centre at 123 Queen Street West, (+416) 361-1000. <http://starwood.webcanada.com>

There are many restaurants located nearby, including Canoe, Jump, Peter Pan, Ruth Chris' Steakhouse, Ultra Supper Club and numerous sushi restaurants along Queen Street. To the area southwest of the consulate, there are a range of restaurants and a large number of clubs and bars. The Skydome, the CN Tower and the Art Gallery of Ontario are to the east just a short walk from the consulate. The Eaton Centre, a large shopping complex, is also located nearby, as is the Queen Street shopping area to the west.

AMERICAN AND CANADIAN HOLIDAYS FOR 2008

Jan. 1	New Year's Day
Jan. 2	Day After New Year's Day
Jan. 21	Martin Luther King Jr.'s Day
Feb. 18.....	Presidents Day
Mar 21	Good Friday
Mar 24.....	Easter Monday
May 19	Victoria Day
May 26	Memorial Day
July 1	Canada Day
July 4.....	Independence Day
Aug. 4.....	Heritage Day/Civic Holiday
Sept. 1	Labor Day
Oct. 13.....	Columbus Day/Thanksgiving
Nov. 11.....	Remembrance Day/Veterans Day
Nov. 27.....	Thanksgiving Day
Dec. 25	Christmas Day
Dec. 26	Boxing day

In the United States, when a holiday falls on a Saturday, it is observed on the Friday. When a holiday falls on a Sunday, it is observed the following Monday. Canadian holidays falling on a Saturday or Sunday are observed the following Monday.