

Business Visitors: Understanding Risks, Preparing to Enter the U.S.



Immigration Blog

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There are a few nearly universal requirements for someone to be admitted to the U.S. as a “visitor.” For instance, one must have a foreign residence to which he/she plans to return. Visitors also cannot be paid for their U.S. activities from a U.S. source, except (in certain cases) for incidental travel expenses or for limited other purposes. Entries must be temporary in nature, and an officer must be convinced that the visitor is not going to enter with the intent to reside in the U.S. temporarily or permanently.

Importantly, a B-1 (Business Visitor) applicant to the U.S. will fail to qualify for admission if an officer believes he or she plans to work in the U.S. I frequently refer to the word “work” as one of those kinds of four-letter words at the border. Many U.S. Customs and Border Protection officers will describe work as “anything for which someone normally gets paid.” Those who think they can skirt work authorization requirements by simply getting paid outside the U.S., getting paid in foreign dollars, or volunteering their services might be in for a rude awakening at the border.

Another more formal test applied by U.S. Customs and Border Protection (CBP) officers is to require a work authorization for those whose U.S. activities will have an impact on the U.S. labor market. If a business would have to hire a worker in the U.S. if the foreign national does not come to the U.S., those activities and that foreign national may be required to obtain a work authorization to come to the U.S.

Another consideration in determining if someone qualifies as a Business Visitor is identifying who the beneficiary of the activities is. If the traveler is checking on her Canadian employer's subsidiary to ensure its U.S. office is maintaining the high standards of the parent organization, for example, the beneficiary of the activities is the Canadian company, and the visitor will likely qualify as a B-1 business visitor. If the Canadian worker is hiring staff in the U.S. or filling in for a U.S. company worker presenting at a trade show, he will likely not qualify for B-1 status.

If you plan to send an employee to the U.S. as a Business Visitor, please see the following talking points, which you can use to guide and educate your employees regarding how their activities might impact their entries to the U.S., and how to approach interactions with CBP officers:

Question: I have traveled to the U.S. many times before on business, and have always been admitted as a Business Visitor. Does this mean my activities are okay in Business Visitor status, and I don't need a visa?

Not necessarily. CBP's analysis of B-1 qualifying activities has become much tighter in the past few years—and certainly, since the November 2024 presidential election. We have many clients who have traveled without a visa for years who are now being told by government officials that they need a visa or work authorization to conduct the same activities in the U.S. The law has likely not changed; however, policies and enforcement certainly have—a lot.

Question: If I'm told I need a visa/work authorization when requesting admission to the U.S., and I think I don't, should I raise my concerns with the officer?

This is circumstantial, of course, but in general, the answer to this will almost always be “no.” Unless you're pretty sure that the officer has totally misunderstood something you've said, any attempt to “make your case” with the officer will likely be viewed as your being argumentative. This normally does not make the officers more willing to admit you as a Business Visitor.

Unfortunately, it can be very difficult to change the decision of a consular or preclearance officer or border inspector, and the right to appeal these types of decisions is basically nonexistent. A visa/work authorization status may be available, so you should immediately contact U.S. immigration counsel to determine your options, if denied entry.

Question: I was stopped at the border and told I need a certain type of visa. Does this mean I qualify for that visa/work authorization status?

No. While some officers have knowledge of the detailed requirements associated with various types of visas, many have only a foundational knowledge. For this reason, it is best to check with qualified immigration counsel to determine what the best visa/status is based on your situation.

Question: Why can't I just enter using my NEXUS? Then I won't have to deal with the issue, right?

Wrong. NEXUS officers can and do still ask the purpose of your trip. If you misrepresent, it's entirely possible that they can find out. And if they find out, you will lose your Trusted Traveler status—and your NEXUS pass, likely permanently. NEXUS is a discretionary program, and it is very difficult to get “trusted traveler” status back if you lose it for any reason. It's also easier than most people think to lose this status.

Question: When I go to the U.S. border or airport to board a flight to the U.S., what if I just say that I'm visiting friends?

The #1 rule at the border is **do not lie**. While we don't advise telling a CBP officer your whole life's story either, you need to directly, succinctly, and **honestly** answer the specific question you are asked. If the officer determines that you have lied or “willfully misrepresented a material fact” when seeking admission to the U.S., you will likely be denied entry and could be assessed as inadmissible to the U.S. for future entries—potentially, permanently.

Question: I have a criminal record that I have not disclosed to my employer. Can that impact whether I am admitted to the U.S.? What remedies are available if a Customs and Border Protection or visa officer determines that I am inadmissible to the U.S.? Does this mean I can't come in ever again?

Past convictions can impact your ability to enter the U.S. Little is more embarrassing to employees than mistakes they have made in the past, resulting in criminal records, so many employees are reluctant to disclose these things to their employers. We encourage employers to have the conversation with their employees to see if there is anything that could be problematic. Some of our clients provide our names and numbers to their employees and encourage them to reach out directly to us if they have a concern, to determine whether they might have a problem that could result in their having an issue entering the U.S.

If someone is inadmissible, there may be a waiver of inadmissibility available. In some cases, individuals told that they need a waiver of inadmissibility to enter the U.S. actually do not need this waiver, because their offense falls into something called the “petty offense exception” to inadmissibility—and a letter describing why they are not inadmissible, along with appropriate evidence, is all they need to travel. You should contact a U.S. immigration lawyer for assistance as soon as possible to assess your eligibility.

Question: What kinds of resources does U.S. Customs and Border Protection have/use to determine the truth of my answers at the border, and/or whether I might have violated any U.S. laws impacting my admissibility to the U.S.?

U.S. CBP has access to government databases and resources, which may be shared across agencies—both domestic and possibly foreign as well. Which information is shared—and how it is shared—is constantly changing and not publicized. If you have ever encountered an issue obtaining a visa or entry to the U.S., it's a safe bet that U.S. CBP may have access to that information when you arrive at the port of entry or preclearance location.

CBP also regularly uses the Internet—and particularly, social media—to determine the character and actions of individuals entering the U.S., and whether the individual poses a risk to the health, welfare or safety of U.S. persons. If you're going to the U.S. to host an event, for instance, they might be able to see advertisements for the event online showing your employer as the host, which could raise their suspicion as to the purpose of the individual's entry to attend (vs participate in) that event.

All persons, baggage, and merchandise arriving in, or departing from, the United States are subject to inspection, search, and detention—including electronic devices. Today, federal agents can seize and search your phone, and even make a copy of it for forensic experts to analyze its contents off-site. Canadians and other foreign nationals entering the U.S. should be prepared to surrender their cell phone or other electronic device(s) for a full search of all information not uploaded to the cloud. They may also be asked for passwords and social media handles. While it is rare for Business Visitors to be asked for these things, it can happen, and visitors should not be flustered or demonstrate annoyance or frustration if it does.

Question: If a CBP agent takes my phone, tablet or other electronic device, can they see everything on the device(s)? Can they use this information to determine whether I am admissible or inadmissible to the U.S.?

According to a CBP directive published January 4, 2018, border searches of electronic devices may include searches of the information stored on the device when it is presented for inspection or during its detention by CBP for an inbound or outbound border inspection. The border search will include an examination of only the information that is resident upon the device and accessible through the device's operating system or through other software, tools, or applications. Officers may not intentionally use the device to access information that is solely stored remotely.

In the case of an advanced search, CBP may not only gain access to the information on the device, but also review, copy and/or analyze the device's contents by connecting external equipment.

To avoid CBP retrieving or accessing information that you do not want CBP to have, applicants for entry to the U.S. should:

- Not bring electronic devices; or
- Review information on their device and/or bring clean electronic devices to the border; and
- Always disable connectivity to any network (e.g., by placing the device in airplane mode) for any accompanying devices.

Please note that in FY 2024, out of the over 420 million travelers CBP processed at ports of entry, CBP only searched the electronic devices of 47,047 international travelers. However, travelers should be aware and accepting of the fact that this does and can occur.

Question: Can I just refuse to turn over my electronic device(s)?

You can, but we would not advise you to do so, as border agents could then detain you and take your phone/electronic device anyway to try to unlock it on-site or send it to off-site experts to unlock it. They can also refuse your entry to the U.S.

If CBP determines that the device is subject to seizure under law (e.g., if the device contains evidence of a crime, contraband or other prohibited or restricted items or information) then you will be notified of the seizure as well as your options to contest it through the local CBP Fines, Penalties, and Forfeitures Office.

Question: What other things should I do to prepare to enter the U.S. as a Business Visitor?

- i. Be respectful and polite at all times. Patience and calm are often lacking when experiencing unexpected or lengthy travel delays and/or government questioning, but you are much more likely to be treated fairly and given advantageous treatment if you remain composed and courteous.
- ii. Check and clean up your social media and other online presence to prevent the appearance of impropriety, and consider carefully what content you post moving forward. While it is common knowledge that one's online presence does not always match or honestly represent how one comports in their real life, if something you have represented online raises a concern to CBP agents, it very well may be a problem for you—and any attempt to say the objectionable online behavior was due to blustering, exaggeration of beliefs or similar justifications might only solidify CBP's view that you are an untrustworthy or dangerous individual.
- iii. Put your cell phone and other Wi-Fi-enabled device(s) on airplane mode before reaching the border.
- iv. Be prepared to answer questions about your intended activities in the U.S., as well as much more personal things (e.g., your use of drugs or past criminal convictions). You should offer this information only if asked, but should respond directly and succinctly to any questions.
- v. If you become uncomfortable with the line of questioning at the border, you may ask to withdraw your application for admission. Remember that based on the U.S. Constitution, you have a right to remain silent, but doing so may lead to additional lines of questioning. You will also likely not gain admission to the U.S. if you refuse to answer questions, most likely on that attempted entry, but also possibly in the future. Finally, note that granting a request to withdraw your application for admission is discretionary; there is no obligation for the officer to allow you to do this. Officers always have the right to detain and deport you, although instances of this are rare.

If you have questions or concerns, please reach out to a qualified U.S. immigration professional. Our Immigration Practice Team at Lippes Mathias LLP stands ready to assist. Please contact Elizabeth M. Klarin (eklarin@lippes.com) or Eileen M. Martin (emartin@lippes.com) with any questions.

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