



Practice Pointer: Third Country Nationals (TCNs) Should Use Caution When Processing Non-Immigrant Visa Applications in Canada

By Jerry Grzeca (Vice Chair), AILA Department of State Liaison Committee [April 2010]

The Department of State Liaison Committee reminds AILA members and their third country national clients (TCNs) to use caution when considering applying for non-immigrant visas at U.S. consular posts in Canada.

Third Country Nationals with Foreign Degrees

With increasing regularity, U.S. consular posts in Canada are refusing visas under INA § 221(g) to TCNs with foreign degrees who have not been previously issued H-1B visas from their home posts, and are referring them to their home countries for visa processing. We believe that the Canadian posts' distrust of degrees that are not from the U.S. or Canada stems from past discoveries of fraudulent degrees from certain parts of the world.

While Mission Canada does not publish this as official policy, it does warn on its website that this situation may happen (http://www.consular.canada.usembassy.gov/usa_visa.asp) where it says under the H-1B section, "Evidence of qualifications must be original or certified copy. Consular officers in Canada may refuse to issue a visa to H-1B applicants if their education and/or work experience is solely or predominantly from a country other than the U.S. or Canada."

Third Country Nationals Applying for Visas in Canada Who Last Entered the U.S. as Visitors

Mission Canada also generally discourages TCNs from applying at Canadian posts if they last entered the U.S. in visitor status as indicated by the following note in the NVARs On-line Appointment System:

Note: The Visa Appointment Reservation System is intended for use by persons in the U.S. and Canada. Persons physically present in the U.S. or Canada may obtain an appointment and apply for a nonimmigrant visa at one of the U.S. consular posts in Canada. *Please be aware that it is generally more difficult for applicants to obtain visas when they apply outside their home country. Consular officers in Canada may be unable to properly assess the circumstances of and/or evaluate foreign documents presented by applicants who are visitors in Canada. In such cases, the consular officer may deny the visa application and recommend that the applicant return to his/her country of normal residence.* For this reason, persons applying for F, M, J, H, or L visas, who are presently

in the United States on a B (tourist or business) visa or on a visa waiver, are **strongly** advised to apply for their new visas in the country of their permanent residence. (Emphasis added.) *See* <https://www.nvars.com/Production/UserHome.aspx>.

The DOS Liaison Committee continues to work with the Visa Office at the Department of State in an effort to encourage them to facilitate visa processing for TCNs applying in Canada.