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CBP Further Restricts Canadian L-1 Applications at the Border

⊙ UNITED STATES

At a glance

- *Canadian L-1s seeking to renew their status at the border are likely to be refused by ports of entry and pre-flight inspection sites, due to a recent change in CBP practice.*
- *Until further notice, Canadian nationals should be sponsored for renewal of their L-1 status through an extension of stay petition filed with USCIS.*
- *Initial, intermittent, and commuter L-1 applications for Canadians are not affected by the change in policy, and continue to be adjudicated by CBP at U.S. ports.*

The issue

U.S. Customs and Border Protection (CBP) has expanded its recent practice of refusing L-1 renewal applications for Canadian nationals, now implementing the policy at nearly all U.S.-Canada ports of entry as well as all Canadian airport pre-flight inspection sites.

Beginning in March 2019, certain CBP ports of entry took the position - despite existing regulations and longstanding agency practice to the contrary - that Canadian L-1s are not permitted to seek renewal of their status at CBP ports of entry. The ports asserted instead that these L applicants must be sponsored for an extension of stay petition with U.S. Citizenship and Immigration Services (USCIS) to renew their status. Initially the new practice began with a limited number of CBP ports, then became increasingly widespread, and has now been confirmed as CBP's official position on the issue of border L renewals.

Though it appears a small number of ports continue to adjudicate Canadian L renewals according to prior policy and practice, these adjudications are not likely to continue as CBP headquarters begins training all ports on its new policy.

Who is affected

The new CBP policy of refusing Canadian L renewal applications applies to:

- Canadians in L-1 status seeking to renew at a CBP port of entry, whether via individual or blanket application; and
- L-2 dependents of the above L-1 applicants.

The new policy *does not* apply to the following Canadian nationals, who may continue to submit L applications at CBP ports of entry and pre-flight inspection sites:

- *Initial L applicants*: Those eligible for a new five (L-1B) or seven (L-1A) year maximum stay in L-1 status; and
- *Intermittent and commuter L applicants*: Those who qualify for L-1 intermittent or commuter L status by residing in Canada and respectively, either spending less than six months in the U.S. per year in L-1 status, or entering the U.S. for L-1 part-time work only. Subsequent intermittent/commuter L-1 applications are not considered by CBP to be renewals, and therefore should continue to be adjudicated. There have been reports that some ports continue to reject these L-1s; CBP has indicated it will clarify to border ports that intermittent/commuter L applications are exempt from the new policy and should be continue to be processed.

What the new policy means for Canadian L renewals

For the time being, and despite existing regulations to the contrary, Canadian L-1 applicants seeking renewal of their status should be sponsored for an extension of stay petition with USCIS, as a border application is likely to be refused.

Due to lengthy USCIS processing times, companies may need to consider premium processing for some L extension petitions. By premium processing with an additional fee ($1410), sponsoring companies will receive a response on the L extension – either approval, request for evidence, or denial – within 15 calendar days.

Fragomen, the American Immigration Lawyers Association and other business immigration stakeholders continue to advocate for a return to longstanding border L renewal procedures and will continue to do so. If your company wishes to engage in advocacy on this issue, please contact your Fragomen professional or the Fragomen Government Strategies Practice Group.

Fragomen is monitoring CBP's border L policy and will provide updates as they occur.

This alert is for informational purposes only. If you have any questions, please contact the immigration professional with whom you work at Fragomen.