



About Ryan S. Neely

Ryan maintains a diverse immigration practice at Farris providing advice to clients on a variety of immigration matters, including assisting Canadian companies wishing to bring foreign nationals into Canada on work permits and other related applications.

In addition to his immigration practice, Ryan practises in the area of employment law. In this regard Ryan has assisted senior counsel in a variety of matters before the BC Superior Courts, the Federal Courts, the BC Human Rights Tribunal and labour relations boards.

Ryan contacted by phone at (604)661-9359 or email at rneely@farris.com

Vancouver

2500 - 700 W Georgia St
Vancouver, BC
Canada V7Y 1B3

Tel 604 684 9151
Fax 604 661 9349

Kelowna

800 - 1708 Dolphin Ave
Kelowna, BC
Canada V1Y 9S4

Tel 250 861 5332
Fax 250 861 8772

Victoria

1100 - 1175 Douglas St
Victoria, BC
Canada V8W 2E1

Tel 250 382 1100
Fax 250 405 1984

farris.com

Business Visitors – Who are they and what do they do?

Application for business visitor entry to Canada is addressed in the following:

1. Immigration and Refugee Protection Regulations (“IRPR”) at s. 186 (a) & 187;
2. North American Free Trade Agreement (“NAFTA”);
3. Canada Chile Free Trade Agreement (“CCFTA”);
4. Canada Peru Free Trade Agreement (“CPFTA”); and
5. General Agreement on Trade in Services (“GATS”).

In reviewing how the business visitor criteria are described in each of the above, it is important to note that there is, in general, limited differences. In fact the foreign worker manual specifically states that the IRPR treatment of business visitors is meant to “parallel the NAFTA business visitor criteria”.

In assessing the merits of a business visitor entry, there are underlying considerations that are common to all applications for entry as a business visitor, specifically as described in IRPR s. 187 (3). Accordingly, a business visitor must not intend to enter the Canadian labour market and their primary source of remuneration must remain outside of Canada.

IRPR Business Visitors

The following permissible entries under the IRPR are considered in section 5.2 of the Foreign Worker Manual:

- **Buyers** – A foreign national employed by a foreign company may enter Canada as business a visitor for the purpose of purchasing Canadian services or goods for the benefit of the foreign company. This category not only covers entry for the purpose of entering into the actual agreement for the purchase of the good or service, but also covers ancillary entry during the production of the good in order to inspect quality. Additionally, this category covers entry for the purpose to be trained on the use of the Canadian good or service in advance of its delivery. Note that the foreign national cannot be involved in the production of the Canadian good or service.
- **Sellers** – A foreign national employed by a foreign company may be permitted entry to Canada as a business visitor in order to sell goods or services to Canadian purchasers for the benefit of the foreign company. This is designed for business to business sales and accordingly, sellers cannot sell directly to the Canadian general public (ie – individuals). Note that in order to be eligible as a business visitor in this category, the goods or services sold must not be delivered or produced in the same visit. Additionally, if the good is produced in Canada, a foreign national may not sell that good in Canada without being seen to have entered the Canadian labour market, thereby requiring a work permit.

- After Sales Service – Foreign nationals providing after-sales service to Canadian purchasers of foreign goods are included as business visitors. Note that the requirement of “specialized knowledge” that is required under the NAFTA provisions is absent under the IRPRR provisions. After-sales services include those provided by foreign nationals repairing, servicing, supervising installers, and setting up and testing commercial or industrial equipment. The service must be provided as part of the original sale contract. This category prohibits hands-on building. Foreign nationals in Canada for more than two days in this category must be issued a Visitor Record.
- Supervisors – This category is designed fairly restrictively. It covers the entry of a foreign national employed by a foreign company for the purpose of supervising the installation of specialized equipment or machinery onsite purchased by a Canadian company from a foreign company. Alternatively this category also covers the supervision of dismantling or removal of specialized equipment or machinery so long as the purpose of the dismantling of the equipment is its removal from the country. Note that the foreign worker manual in section 5.2 specifically notes that one supervisor could naturally be expected to supervise five to ten workers
- Trainers – This category allows entry to Trainers employed by foreign companies in order to provide training to employees of a Canadian company where that Canadian company and the foreign company are related companies. In this sense, the companies should have a parent/subsidiary relationship or share common ownership.
- Trainees – This section allows for the entry of foreign nationals employed by a foreign company for the purposes of attending internal company training in Canada whereby the foreign company and the Canadian company are related as described above. Canadian citizens or permanent residents must not be displaced as a result of the entry of the foreign national for training
- Members of a Board of Directors - A foreign member of a board of directors (or his/her delegate) of a Canadian company is entitled to enter Canada to attend a meeting of that board. They are considered a business visitor in spite of the fact that they are directing a Canadian company and can be remunerated for their position. Additionally, individuals seeking to attend a board of director meetings can be considered business visitors.
- Full time employees of short term temporary residents – This category is really meant to cover nannies, personal assistants, etc working full time for foreign nationals entering Canada on a temporary basis. This individual’s stay in Canada should not exceed 6 months.
- Conventions – Where a foreign company or organization is holding an event/conference in Canada regardless of whether or not it is for profit, employees of that foreign company may enter Canada as business visitors. Included in the list of people eligible are full time employees of the foreign company as well as certain foreign nationals that have been contacted by the foreign company for the Canadian event including event planners, exhibit managers, professional conference organizers, destination marketing company personnel and event accommodation consultants.

If an event is being held by a Canadian organization, foreign nationals that have been contracted by the Canadian company may not enter as business visitors and will likely require LMO confirmed work permits (however they may be captured by R. 186(k)).

NAFTA Business Visitors

While the IRPR closely mirrors the business visitor provisions in NAFTA, there are some categories that are unique to NAFTA. Note that citizenship in a member nation is required.

- Harvester Owners – Owners of machinery used for gathering agricultural crops such as grains fruits and vegetables in Canada are authorized to enter Canada in order to supervise a crew. However this individual can not undertake hands-on work.
- Tour Bus Operators - bus driver may transport passengers in the same way that truck drivers may transport goods. As long as the trip originates or terminates in the United States or Mexico, the bus driver may take the bus to one or several Canadian locations and disembark or board passengers along the way as long as no individuals both join and leave the bus while it is in Canada. In essence, if the Bus originates in the US, its passengers must originate from the US. This does not allow for US or Mexican busses to provide point to point service within Canada.
- Transportation Operators - Operators transporting goods or passengers to Canada from the United States or Mexico, or loading and transporting goods or passengers from Canada, with no unloading in Canada, to the United States or Mexico.. This provision includes those persons necessary for the operation of a land transportation conveyance used to transport goods and/or passengers. Persons covered by the provision include the driver and other persons on the vehicle providing services that support the moving operation of the vehicle (for instance, persons providing services to passengers and persons providing services necessary for the movement of the conveyance. Included in this is Taxi Drivers, so long as they are entering Canada to pick up passengers bound for the United States where they will disembark (no point to point service within Canada).
- Customs Operators - US customs brokers entering Canada to perform brokerage duties relating to the export of goods from Canada to or through the United States. Customs brokers providing consulting services regarding the facilitation of the import or export of goods. This provision covers American and Mexican customs brokers travelling to Canada to consult and not to provide brokerage services.
- After-sales service or warranty work – NAFTA provides additional benefits as compares to the IRPR in this category. Specifically NAFTA allows for after-sales agreements and warranty agreements to be extended before their expiration which effectively prolongs the time in which foreign nationals are permitted entry as business visitors. Additionally, NAFTA allows for third party providers. So long as the contracting parties originally consider that after-sales work can be performed by another third party, that third party may avail themselves of the business visitor provisions. Hands-on building is prohibited under this category.

CCFTA Business Visitors

With respect to the CCFTA, the provisions dealing with business visitors are essentially identical to the provisions of NAFTA but for a few exclusions. Note that citizenship in a member nation is required. The business sectors excluded are Harvest Owners, Transportation Operators and Bus-tour Operators.

CPFTA Business Visitors

Additionally, the CPFTA also mirrors NAFTA, but with some additional business visitor activities included. Note that citizenship or permanent residence in a member nation is required:

- After –lease servicing is specifically included, not just after-sales services.
- Under General Services the Peru agreement specifically notes:
 - Cook personnel attending to participate in food events or exhibitions, or consulting with business associates.
 - Information and communication technology service providers attending meetings, seminars and conferences, or engaged with business associates.
 - Franchise traders and developers who seek to offers their services.

GATS Business Visitors

Finally note that the GATS provisions for Business Visitors are more restrictive than the IRPR criteria. Accordingly it is good practice to request entry pursuant to the IRPR rather than requesting business visitor entry pursuant to GATS. The definitions for business visitors under GATS are more restrictive than the general definitions under the IRPR given that under GATS business visitors are restricted to specific service sectors.

Length of Stay

But for in special circumstances, six months will be considered the extent of an applicant's entry as a business visitor. If you anticipate a foreign national will be making frequent trips into Canada as a business visitor over a defined period you may wish to consider requesting a Visitor Record be issued to assist with further travel. However that individual is always subject to examination upon entry.

Place of Application

Visa Requiring Countries – Applicants must use Consulate or Embassy overseas.

Visa-Exempt Countries – Upon arrival at a Canadian Port of Entry. While a majority of cases proceed smoothly at a Port of Entry, I have used the TFWU in order to get an advanced opinion in cases where I anticipate that there will be an issue, or for people who have been previously rejected.

NEXUS & NAFTA Business Visitors

From the marketing of the NEXUS program, one might assume that enrolment in the program is of the greatest benefit to frequent travelling business visitors. In practice I have found that this exact type of applicant has received the most scrutiny from Canadian officials for enrolment in the program. However, if you consider the effect of enrolment in NEXUS it becomes clearer why there is a reluctance to enrol

these individuals, as enrolment results in limited examination of these individuals at the Port of Entry. Accordingly, if there are any questions in terms of whether the entry is work related or truly as a business visitor, they will likely reject the NEXUS application citing the need for a work permit.

In these cases, I have found that the TFWU can be useful when an applicant's entry truly is consistent with the business visitor provisions. In these situations I have obtained an opinion from the TFWU that the anticipated entries are consistent with business entry provisions. I then file the opinion along with the documents used to obtain the opinion with the NEXUS Redress Committee in Niagara, ON to have the NEXUS application approved. Of course, even upon enrolment into the program, the applicant should always have their supporting documentation with them on further entries in case they are examined.