

Memorandum

TO: Employees Seeking Nonimmigrant Visas
FROM: Seyfarth Shaw Business Immigration Group
RE: TCN Processing

I. Introduction

The purpose of this Memorandum is to provide general information about obtaining a visa stamp at a United States consular post in Canada or Mexico as a so-called “Third Country National.”

II. General Information About Nonimmigrant Visa Applications

You may have received an original Notice of Approval (Form I-797), a copy of the nonimmigrant visa petition that was filed for you, and an e-mail from Seyfarth Shaw to your employer discussing the approval of your nonimmigrant visa petition. Please note, however, that if you plan to travel internationally to any country other than Canada or Mexico, you must have a valid visa stamp in your passport in order to return to the United States. Even when traveling to Canada or Mexico, you can reenter without a visa stamp only if you have a valid I-94 card and you were in Canada or Mexico (and visited no other country) for less than 30 days.

Generally, there is no better place for you to apply for a visa than in your home country. However, in certain situations, travel to your home country might be undesirable. In such situations, you may want to consider processing a nonimmigrant visa application at a U.S. consular post in Canada.

III. Applying for Visa Stamp as a “TCN”

A. What is a “TCN”?

In a country other than your home country, you are considered by the U.S. authorities to be a “TCN.” A TCN is a “Third Country National.” It means that you are neither a national of the U.S. nor of the country in which you are now trying to obtain a visa. For example, a Greek citizen who applies to the U.S. consulate in Toronto, Canada is a “TCN” because he or she is neither a U.S. citizen nor a Canadian citizen.

TCNs generally get low priority with respect to consular resources. Using the above example, the United States consulate in Toronto, Canada is there to serve: (1) expatriate citizens of the United States who are currently resident in Canada; and (2) citizens of Canada wishing to travel to the U.S. An individual from a country other than Canada or the U.S. will be considered a lower priority. Please take this reality into consideration when choosing to apply for a visa in a third country.

B. Possibility of Denial When Applying for a Visa as a TCN

There is no guarantee that a TCN applicant will receive a visa. The consular officer may deny your case and ask you to apply instead in your home country. In such a case, it is likely to be noted in your passport as a “Denial Without Prejudice.” This is to say that there was nothing wrong with the merits of your case but that the location of the application was wrong.

Please note that if you have been denied a visa in Canada or Mexico, it means that you may not re-enter the U.S. You will then be required to return to your home country in order to obtain a visa. Only once you have been granted a visa may you return to the U.S.

C. Applying as a TCN in Canada or Mexico

If, in spite of the foregoing information, you still wish to apply for a visa in Canada or Mexico, please note the following information, as it can assist you in presenting your case.

1 Do You Need A Visa To Enter Canada or Mexico?

Before you spend time, energy, and money trying to arrange for an appointment at a U.S. consular post, you should first check to see whether you will need a visa to enter Canada or Mexico. Citizens of certain countries are not allowed to enter these countries unless they possess the appropriate visas. To find out if you require a visa to enter Canada, and to learn about the proper application procedure, please visit <http://www.cic.gc.ca/english/visit/visas.asp>. To find out if you require a visa to enter Mexico, and to learn about the proper application procedure, please visit http://www.inm.gob.mx/index.php/page/Paises_Visa/en.html or contact the Mexican Embassy in Washington, DC at (202) 728-1600 or at <http://portal.sre.gob.mx/usa/>.

2 Obtaining an Appointment at a U.S. Consulate in Canada

You must obtain an appointment at a specific consular office for a specific date and time. To apply for an appointment, follow the instructions found on the U.S. Visa Service website at http://usvisa-info.com/en-CA/selfservice/ss_country_welcome.

3 Obtaining an Appointment at a U.S. Consulate in Mexico

You must obtain an appointment at a specific consular office for a specific date and time. To apply for an appointment, follow the instructions found

on the U.S. Visa Service website at http://usvisa-info.com/en-MX/selfservice/ss_country_welcome.

4 Presenting Yourself Before the Consul

The consular officer has complete discretion as to whether to approve or deny your visa. Simply telling the consul that it is “inconvenient” for you to obtain the visa in your home country (even if it is) is not going to compel him or her to issue you the visa. You must present your documents and be prepared to respond to any questions the consul may have.

If you are in a job that requires frequent travel, then you should explain the fact that you may need to travel internationally at a moment’s notice and that it would give you and your company more security to know that you already had a visa in your passport. This is considered a very compelling reason to grant a visa to a TCN. However, you should make such a statement only if it is accurate and you can show written proof of your position. Therefore, please be prepared to corroborate any statements you make.

5 Receiving the Visa

As a result of enhanced security clearance measures, it generally takes up to five working days for the passport containing the new visa to be returned. In some cases, the security clearance could require several additional weeks for processing, particularly if the proposed U.S. activity falls within the Technology Alert List (refer to the Memorandum entitled “Technology Alert List” under *Related Information -- Immigration Memoranda* on www.immstar.com) or if your nationality is one that routinely requires additional security screening. In these cases, you might want to arrange for TCN processing when you still have validity remaining on the existing visa stamp so that you can re-enter the U.S. on the existing visa stamp to await completion of TCN processing; this option requires the cooperation of the consular officer in that the existing visa should not be cancelled pending processing.

D. Documentation Required for Visa Issuance

You will receive an appointment letter from the U.S. Consulate which will advise you of the specific documents requested by that consular post. Please visit www.immstar.com and click on *Immigration Memoranda* under *Related Information* to access the companion Memorandum entitled “General Information on Obtaining a Nonimmigrant Visa Stamp” for a detailed discussion of the standard documentation requirements that will also apply to the TCN process.

E. Fee Payment

Please note that most consular posts require that the visa application fee be paid prior to application processing either online or at a local bank in exchange for a fee receipt. Most consular posts do not permit payment of the fee in cash, and you may thus need to arrange your

travel logistics to allow for the necessary time to process the fee during bank hours prior to appearance at the consular post for your interview.

IV. Conclusion

While the best location to apply for a visa stamp is in your country of citizenship, doing so is in certain circumstances not an option. If you find yourself in such a situation, it is important that you carefully prepare for processing as a Third Country National.

If you should have any questions about applying for a visa stamp, please reach out to your immigration contact person at Seyfarth Shaw LLP. We will be happy to address your questions.