

ImmQuest

"Qui bene Interrogat bene docet" "He who questions well teaches well"

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Is Now the Time to Expand the Family Class to Include Siblings?

Mario D. Bellissimo

(Part One of Two)

Introduction

The *Immigration and Refugee Protection Act* (IRPA) currently excludes permanent residents or those with Canadian citizenship from directly sponsoring their siblings. This would appear inconsistent with one of the core objectives of the IRPA, which is to "see that families are reunited in Canada."¹

¹ *Immigration and Refugee Protection Act*, "Objectives-immigration" 3(1)(d), online: Department of Justice Canada <http://www.laws.justice.gc.ca>.

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Rules for Canadians Entering the United States Changed

Edward C. Corrigan

On June 1, 2009, the rules for entering the United States at land border crossings became much stricter. This is a requirement of the *Western Hemisphere Travel Initiative* (WHTI), which is a U.S. law requiring all travelers, including Canadian citizens, to carry a

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Please send your questions to *ImmQuest* care of Mario D. Bellissimo at mdb@obr-immigration.com. If you have any questions you would like asked of either Citizenship and Immigration Canada or the Canada Border Services Agency, send it along and we will ask on your behalf.

Rules for Canadians Entering the United States Changed

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passport or other appropriate secure documentation when entering the United States from within the Western Hemisphere.

Starting June 1, 2009, U.S. Customs and Border Patrol will take a fingerprint scan of international travelers exiting the United States from Detroit. A similar pilot project will be undertaken by the U.S. Transport Security Administration who will take fingerprint scans of international travelers exiting the United States from Atlanta.

Canadian citizens over the age of 18 will be required to present one of the following valid WHTI-compliant documents before entering the United States by land or water:

- a passport;
- a NEXUS card;
- a FAST card; or
- an Enhanced Drivers License (EDL) or an Enhanced Identity Card (EIC) from a province or territory where a U.S.-approved EDL/EIC program has been implemented.

As of June 1, 2009, Canadians and other travelers crossing the U.S. border will be asked to carry a Radio Frequency or RF-enabled card which transmits a passport photo image and information about the traveler to border control staff systems. This card will enable border officials to check that photograph against the physical appearance of the traveler or their vehicle.

The newly created enhanced Ontario Driver's Licence qualifies as an entry document for the United States. Nine ServiceOntario centres are accepting applications for this passport alternative, which can be used at Canada-U.S. land and water border crossings.

Individuals who wish to apply for an enhanced licence should visit www.ServiceOntario.ca to book an appointment. Appointments

were made available starting May 19, 2009 with the first batch of licences projected for delivery by June 1, 2009. For more information on this enhanced licence, please call ServiceOntario at 1-800-387-3445 or (416) 235-2999.

The NEXUS and FAST card programs offer a simplified and expedited border clearance process to low-risk, pre-approved travelers. These cards must be applied for and are a great benefit for frequent travelers, especially truck drivers entering the United States.

The Government of Canada is seeking approval from the U.S. Department of Homeland Security to accept the new Secure Certificate of Indian Status as a WHTI-compliant document to allow entry into the United States when WHTI is fully implemented on June 1, 2009.

Canadian citizens 15 years of age are not required to have any of the above noted documents. They are only required to provide proof of Canadian citizenship, such as an original or a copy of a birth certificate, or a Canadian citizenship card. Canadian citizens 18 years of age and under who are traveling with a school or other organized group, under adult supervision with parental/guardian consent, may also present proof of Canadian citizenship alone to be allowed to enter the United States.

Air Travel

All Canadian citizens traveling to, through or from the United States by air, must present one of the following valid documents:

- a passport; or
- a NEXUS card when used at kiosks in participating airports.

This requirement applies to all Canadian citizens, regardless of age, including children. Canadian citizens intending to fly to, through or from the United States should apply for a passport, keep it up to date and carry it with them when traveling. Expired passports do not qualify as a travel document.

Children Traveling

Canadian and U.S. authorities, as well as transportation companies, are increasingly vigilant in watching persons traveling with children, especially with very young children. Any adult traveling with children may be required to show evidence of parental/custodial and/or access rights, or to provide evidence that he or she

has the consent of both parents, legal guardian, and/or the court to travel with the children. Children may be refused entry or, in some cases, not allowed to leave the United States without proper legal documentation, such as a consent letter or a court order, which allows custody of the child.

If a person younger than 18 is traveling to the United States alone, or with only one parent or another adult, a certified consent letter from a lawyer proving that the trip is permitted by both parents should be carried at all times.

If there is a possibility of a custody dispute developing while the child is out of Canada, legal advice should be obtained from a Canadian lawyer before the child leaves the country.

Rights When Entering the United States

Under U.S. law, foreign nationals do not have the same rights as American citizens. When attempting to enter the United States at a border crossing or airport, a determination will be made by U.S. authorities on admissibility. Travelers could be held for an extended period of time. If the visitor is deemed inadmissible for any reason, entry will be denied. This refusal could cause delays before the person is returned to their point of departure or country of nationality. U.S. constitutional rights do not exist at border crossings for any person entering the country and intrusive searches can take place.

Requirement for Additional Information

Due to increased security, the requirements of U.S. authorities for identification have become much stricter for those wishing to enter the United States. Travelers entering the United States by air or by sea are required to provide additional information before being allowed to enter. This information includes the address at which they are staying in the United States. Visitors may also be asked for proof of residence, employment or educational ties to Canada; evidence that the trip is for a lawful purpose and is of a reasonable length; and also proof of finances while visiting the United States. All transportation carriers, notably airlines, but also rail and bus services, have become much stricter about requiring proof of admissibility to the United States. If the carrier allows passengers who are inadmissible to travel to the United States, they face heavy fines.

Picture and Fingerprints Required

With the implementation of the *United States Visitor and Immigrant Status Indicator Technology* (US VISIT) Program on January 18, 2009, non-U.S. citizens have been required to provide biometrics, such as digital fingerprints and a photograph, upon entry into the United States. Canadian citizens are exempt from this program, unless they require a waiver of ineligibility or if they must obtain an I-94 visa to document dates of entry/exit from the country. This program however, includes all permanent residents of Canada.

A complete list of exempt and non-exempt travelers is available on the U.S. Customs and Border Protection website. However, there have been reports of random screenings of exempt Canadians at U.S. border crossings and airports when visiting or transiting through the United States. Canadians who believe that their information has been wrongly collected can address the issue directly with the U.S. Department of Homeland Security.

The Government of Canada recommends that all Canadians carry a valid Canadian passport when traveling abroad, including visiting the United States. A passport is the only universally accepted identification document. A passport also proves that the individual has a right to return to Canada. Unlike most other foreigners, Canadians are not required to have a Machine Readable Passport to enter the United States, even if the passport was issued outside of Canada.

Canadian citizens who are also permanent residents of the United States must comply with special entry requirements. Entry requirements to the United States have not changed for non-Canadian citizens residing in Canada. For more information on U.S. entry requirements, consult the U.S. Department of Homeland Security website.

This article is not to be taken as a comprehensive legal review of the procedures for entering the United States. For more information, please contact a lawyer or the Department of U.S. Homeland Security.

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