

Canada-U.S. Blog

LEGAL DEVELOPMENTS AFFECTING CANADA-U.S. CROSS BORDER TRADE

New NEXUS Confiscation Trend – Two Confiscations for One Person’s Alleged Error

By Cyndee Todgham Cherniak on December 7th, 2015

Posted in Border Security, Customs Law, NEXUS



We receive many calls from potential clients/clients who have had their NEXUS cards confiscated or cancelled by the Canada Border Services Agency (“CBSA”). We are hearing from more couples who both have NEXUS cards and both individuals have their NEXUS cards confiscated/cancelled by the CBSA. Usually, both cards are confiscated/cancelled because of a single disagreement about what was/was not declared or whether a E311 Form was properly completed (e.g., an incorrect box was checked).

In most cases that we have seen, only one error or alleged error was made. In other words, both individuals are not to blame for the error or alleged error. Often, one person did not communicate with the CBSA officer who made the decision to seize/confiscate/cancel the NEXUS cards. Section 22 of the Presentation of Persons (2003) Regulations limited the circumstances in which a CBSA officer has delegated discretion of cancel a NEXUS card:

22. The Minister may suspend or cancel an authorization if the person
- (a) no longer meets the requirements for the issuance of the authorization;
 - (b) has contravened the Customs Act, the Customs Tariff, the Export and Import Permits Act or the Special Import Measures Act, or any regulations made under any of those Acts; or
 - (c) has provided information that was not true, accurate or complete for the purposes of obtaining an authorization.

Usually, the reason for cancelling a NEXUS card falls under paragraph 22(b). However, if one person did not contravene the listed acts (or both persons did not contravene the listed acts), then the CBSA officer does not have authority to cancel the NEXUS cards of the couple.

The legal arguments are a little more complex and need to be drafted with care. It is important to remember that the NEXUS program is a trusted traveler program.

Tags: Canad Border Services Agency, cancel, cancellation, CBSA, confiscate, couples, E311 Form, NEXUS, Presentation of Persons (2003) Regs

This Blog/Web Site is made available by the lawyer or law firm publisher for educational purposes only as well as to give

you general information and a general understanding of the law, not to provide specific legal advice. By using this blog site you understand that there is no attorney client relationship between you and the Blog/Web Site publisher. The Blog/Web Site should not be used as a substitute for competent legal advice from a licensed professional attorney in your state.

The postings on this Blog/Web Site should not be attributed to McMillan LLP or Mitchell Silberberg & Knupp LLP. Some of the articles are posted by law students, and readers should use caution when relying on any post of a law student.

Cyndee Todgham Cherniak
c/o LexSage Professional Corporation
The Gooderham "Flatiron" Building, 49 Wellington Street East, Suite 501
Toronto, Ontario
M5E 1C9
Phone: 416-307-4168
Fax: 416-760-8999

Susan Kohn Ross
c/o Mitchell Silberberg & Knupp LLP
11377 W. Olympic Boulevard
Los Angeles, California
90064
Phone: 310-312-3206
Fax: 310-231-8406

Copyright © 2016, Canada-U.S. Blog. All Rights Reserved. Strategy, design, marketing & support by LexBlog