

## NEXUS Pass Appeals Process In Canada Is Regulatory

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NEXUS pass holders sometimes run into difficulties when they return to Canada after a trip abroad. The NEXUS pass holder may discover that their “disagreement” with the Canada Border Services Agency (“CBSA”) upon re-entering Canada may result in the immediate confiscation of their NEXUS pass or they may receive a letter in the mail (or by email if they have a GOES account) after the fact informing the pass holder that their NEXUS privileges have been cancelled. An informal and regulatory appeal process has been established — but it is not quick. As a result, until the appeal is resolved, the business persons and frequent travelers must use the snail lines (instead of the fast NEXUS kiosks) while any appeal is under review.

If you are Canadian and your NEXUS pass is confiscated or cancelled by the appeal process is established in the *Presentation of Persons (2003) Regulations*. The appeal process requires a letter to be written and mailed within 30 days of the date of the confiscation or letter informing of the cancellation of NEXUS privileges. The letter must be mailed to the NEXUS Program.

If the confiscation relates to a violation of the NEXUS Program (e.g., using the NEXUS lane when non-NEXUS persons are in the vehicle), then it is only necessary to file an appeal to the Level 1 Redress Committee of the NEXUS Program.

However, if the confiscation relates to a customs infraction/contravention, the person must overturn the customs infraction in order to be successful in the NEXUS appeal (for example, the under-declaration of goods acquired outside Canada). There is a separate process, to appeal valuation, tariff classification and origin issues. The appeal on valuation, classification and/or origin issues (called a “request for redetermination”) is filed with the CBSA, Recourse Directorate. This process takes time.

It is important to file 2 appeals. One appeal is filed with the NEXUS program and is in respect of the cancellation of the NEXUS privileges. The second appeal is the appeal on the merits of the customs infraction. The NEXUS program appeal will be reviewed at the NEXUS Program and then sent to the Recourse Directorate if the explanation has any merit whatsoever. However, if you have filed both appeals, the appeal for reinstatement of NEXUS privileges will be deferred until after the appeal on the merits. The CBSA may or may not understand that the business traveler is more interested in a quick reinstatement of NEXUS privileges and less concerned about the refund of duties and GST/HST.

The appeal must set out the facts, details concerning the dispute and the reasons for the appeal. The appeal should include any and all relevant documents concerning the “disagreement”.

After the appeals are filed, the CBSA, Recourse Directorate will send a copy of the CBSA Officer’s notes on the day in question relating to the “disagreement”. The CBSA, Recourse Directorate will give you 30 days to file additional information after receiving the notes. If your letter of appeal is very divergent from the CBSA Officer’s version of the events, you will have a problem in explaining those differences.

It is not a simple and quick process to appeal a confiscation of a NEXUS pass. The process is not written anywhere and may take over a year.

If you require assistance from a lawyer because the NEXUS privileges are important to you, please contact Cyndee Todgham Cherniak at 416-307-4168.



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