

BUSINESS DAY | BUSINESS TRAVEL

Your Digital Trail Follows You to the Border

By SUSAN STELLIN MAY 7, 2014

Information, money and jobs flow easily around the world, yet it's getting tougher for travelers to cross some borders.

As immigration policies tighten and the security and technology to enforce them increase, travelers can find themselves caught in a web of suspicion that prevents them from visiting some countries. A past arrest or conviction — even a public admission of illegal activity — can be grounds for inadmissibility. So can political activism or the impression that a traveler is visiting on business without obtaining a work visa.

While governments have long aspired to be more vigilant about their borders, databases and the digital tracks people leave have made it easier for agents to investigate and deny entry to some travelers.

A cellphone is partly what tripped up Jake Owen, a musician from Williamsburg, Brooklyn, when he flew to Canada to play at a cafe last year. Mr. Owen, who is a United States citizen, was stopped by a Canadian border officer at the Vancouver airport and detained for several hours while he was questioned about the purpose of his visit.

“He asked, ‘Are you going to be working while you’re here?’” Mr. Owen recalled. “I said, ‘There’s a gig at a coffee shop, but it’s pro bono.’ He said, ‘You know you need a permit to work here,’ very threatening and menacing. He took my phone immediately — I didn’t know he had a right to do that.”

Mr. Owen, who plays the guitar, said the officer found a message on his phone that suggested he was getting paid by the friend he was playing with — a Danish singer — not the coffee shop. But that was enough to get him put on a plane back to Newark.

“I was in a big interrogation room with steel tables. It was really cold, and this guy is acting like he’d caught me red-handed, telling me he could have me barred

from Canada forever if I didn't come clean," Mr. Owen said. "Apparently, I got sent back because I supposedly lied to a federal officer. But I don't really understand what happened. We weren't getting paid — there was no money being exchanged in Canada."

Nancy Caron, a spokeswoman for Citizenship and Immigration Canada, said she couldn't comment on a particular case but clarified that someone playing a small show for even a little money might need a work permit — unlike a famous musician at a large venue.

"Normally, if you're potentially taking a job away from a Canadian, you'd need a work permit," Ms. Caron said. "If you're a big international performer, then you're not taking a job away from someone."

Citizenship and Immigration Canada's website lists examples of visitors who don't need a work permit, including reporters and public speakers. But musicians performing in a bar or a restaurant do typically need one.

Aaron Caplan, a vice president at Perry International, which helps travelers obtain visas, said some countries were more carefully screening visitors for whether they may require work authorization.

"For Brazil, if you're going short-term but you're doing hands-on work — even if it's for a company in the U.S. — there's a separate visa," Mr. Caplan said. "And in China, we have heard they're really scrutinizing what people are doing there, to make sure anyone who is actually working is getting a work visa."

Another issue that can present problems for travelers is a criminal record. Mr. Caplan says Canada is the main country that has surprised visitors deemed "criminally inadmissible" because of a past arrest or conviction.

"Technology has made it easier to check on that," he said.

The United States and Canada now share criminal history data, so Canadian border agents can view records from the F.B.I.'s database, and Canada shares its criminal records with the United States. Travelers may be denied entry to Canada if they have committed any one of a wide range of crimes, including theft, assault, dangerous driving, driving while under the influence of drugs or alcohol, and possession of a controlled substance.

Enforcement of these rules has led to confusion about whether an old shoplifting charge or a D.U.I. might prevent someone from traveling to Canada, but Ms. Caron said in an email that it is not always possible to find out in advance.

"There is no specific mechanism in place that would allow a visitor to know ahead of time whether they would be let in or not," she wrote. "The final decision

on whether to allow someone to enter Canada is made by a Canadian Border Services Agency officer once the person arrives at a point of entry.”

Travelers with criminal records can apply for a rehabilitation waiver or a temporary resident permit to visit Canada, but the application requires copies of court documents that can be costly and time-consuming to collect.

For foreigners hoping to visit the United States, having a criminal record — or even publicly admitting illegal activity — can also be a barrier to entry. This spring, the British chef Nigella Lawson was prevented from visiting after she disclosed in a court case that she had used cocaine, and *The Globe and Mail* reported this week that Mayor Rob Ford of Toronto, who had said he would seek treatment for an alcohol problem, flew back to Canada without officially entering the United States in Chicago. Mr. Ford has also admitted using illegal drugs.

Citizens of countries in the United States’ visa waiver program — like Britain — do not need a visa for short trips but must answer questions like “Do you have a communicable disease; physical or mental disorder; or are you a drug abuser or addict?”

The questionnaire, part of the Electronic System for Travel Authorization, vets travelers and grants them permission to visit the United States. One of the questions asks potential visitors whether they have ever been arrested or convicted of a violation related to a controlled substance or an offense involving “moral turpitude” — a broad list including fraud, larceny and “the intent to harm persons or things.”

Jenny Burke, a spokeswoman for Customs and Border Protection, said that having ESTA approval or a visa does not guarantee admission to the United States and that border officers make final admissibility decisions; they refuse entry to about 366 people a day. Besides being responsible for immigration and customs laws, she said, officers enforce more than 400 laws for other agencies — creating opportunities for mistakes, some lawyers say.

“Border officers are not trained as lawyers,” said Robert Pauw, an immigration lawyer with Gibbs Houston Pauw in Seattle. “We’ve definitely seen cases where they misinterpret the law or don’t understand the law, and people suffer the consequences for that. What you need to be careful about is, if the officer does ask questions more specifically, you need to answer honestly.”

Writers and political activists can also encounter travel problems because of their work, an issue that predates the Internet but is easier for governments to investigate even just using Facebook, Twitter and Google.

Suzanne Nossel, executive director of the PEN American Center, an organization that defends writers' freedom of expression, said human rights groups have had some success helping authors who have been denied travel visas to attend events or give speeches.

After the Bulgarian-German writer Ilija Trojanow — a critic of surveillance by the National Security Agency — was prevented in September from boarding a plane to the United States for a conference, PEN sent a letter to the State and Homeland Security Departments asking for Mr. Trojanov's case to be reviewed. He was allowed to travel to the United States in November. Citing the Privacy Act, Ms. Burke said she could not discuss any individual case.

Although Ms. Nossel says these types of "ideological exclusions" have subsided since 9/11, it can be difficult for travelers to find out why a visa or ESTA permission has been denied or what information is used to make these decisions.

"As more data is being amassed, it is being moved more quickly and easily between government agencies and immigration authorities," she said, "so there can be more of a chance of something popping up."

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