U.S. Customs and Border Protection Office of Field Operations Admissibility & Passenger Programs Enforcement Programs



NAFTA Guide For TN and L Applicants

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U.S. Customs and Border Protection Office of Field Operations Enforcement Programs

NAFTA Reference Guide for TN and L Applicants

The purpose of this guide is to serve as a reference tool to assist Customs and Border Protection officers (CBP) in processing TN and L-1 applicants under the North American Free Trade Agreement (NAFTA). This reference manual has been made into a format that is more direct, to the point and more "user friendly" for officers. We have included examples of Qualifying and Non Qualifying TN as well as L-1 applicants to illustrate the TN and L-1 application process at a port of entry. We have also included excerpts of policy and appendices taken from the NAFTA agreement.

This manual is also the result of a combined effort of Citizenship and Immigration Services (CIS), Department of Homeland Security (DHS) Office of Policy, CBP Field and Headquarters personnel from the Admissibility and Passenger Programs, Enforcement Programs Division working together for an improved resource tool for field use.

This manual should serve as reference guide for CBP officers to curtail the lack of uniformity and consistency in the way TN and L-1 applicants are processed at the ports of entry. In order to ensure a high level of confidence in the accuracy of TN and L-1 processing, this manual contains specific sections on: TN Requirements and Admission Procedures; L-1 (Intracompany Transferee) Requirements, Specialized Knowledge and Managerial Capacity.



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I. Sources of Information

Sources of information in this guide include: Chapter 16 of the NAFTA, and accompanying Appendices and Annex, 8 CFR 214.2(b)(4), 8 CFR 214.6, Inspectors Field Manual (IFM) Chapter 15.4, Interim Decision and Case Law Summaries, and pertinent memoranda.

II. What is NAFTA?

On December 17, 1992, the President of the United States, George H.W. Bush, Mexican President Carlos Salinas de Gortari, and Canadian Prime Minister Brian Mulroney entered into the North American Free Trade Agreement (NAFTA). The implementation of this agreement was provided for by the North American Free Trade Agreement Implementation Act (NAFTA Implementation Act), Public Law 103-182 that was signed into law by President William J. Clinton on December 8, 1993 and entered into force on January 1, 1994.

Created in 1994, NAFTA is a major international agreement governing trading laws between Canada, Mexico, and the United States. The aim of the agreement was to increase free trade, leading to more profitable markets and a wider selection of goods in all three countries. NAFTA is one of the most powerful and wide-reaching trade agreements in the world and it governs the entire spectrum of North American Trade.

III. Overview of NAFTA Temporary Entry Provisions

Chapter 16 of the NAFTA provides for the temporary entry of business persons in four categories: business visitors, traders and investors, professionals, and intracompany transferees.

Business Visitors

In order to qualify for temporary entry as a business visitor, a citizen of one of the parties must be engaged in one of the seven categories identified in Appendix 1603.A.1 of the NAFTA. (See Attachment #1)

Traders and Investors

Annex 1603, Section B of the NAFTA provides that each NAFTA country shall grant temporary entry to a business person seeking to "carry on substantial trade in goods or services principally between the territory of the Party of which the business person is a citizen and the territory of the Party into which entry is sought," or "establish, develop, administer or provide advice or key technical services" to an investment enterprise to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital, in a capacity that is supervisory, executive or involves essential skills, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry."

Canadian and Mexican traders and investors must satisfy the eligibility criteria applicable to all E-1 (Treaty Trader) and E-2 (Treaty Investor) applicants for admission. Both

Canadian and Mexican E-1 and E-2 applicants for admission must possess a valid visa issued by a U.S. consulate.

Professional Workers

In order to qualify for temporary entry as a "TN" business professional, a citizen of one of the parties must be engaged, at a professional level, in one of the professions listed in Appendix 1603.D.1 of the NAFTA, and reproduced at 8 CFR 214.6(c). (See Attachment #2)

• <u>Intracompany Transferees</u>

Annex 1603, Section C of the NAFTA provides that each NAFTA country shall grant temporary entry to a business person employed by an enterprise who seeks to render services to that enterprise or a subsidiary or affiliate thereof, in a capacity that is managerial, executive or involves specialized knowledge, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry. The NAFTA also states that a signatoryNAFTA country may require the business person to have been employed continuously by the enterprise for one year within the three-year period immediately preceding the date of the application for admission.

Canadian and Mexican intracompany transferees must satisfy the eligibility criteria applicable to all L-1 applicants for admission. Canadian L-1 applicants for admission are exempt from the visa requirement; Mexican L-1 applicants for admission must possess a valid L-1 visa issued by a U.S. consulate. In both cases, an L-1 petition must be approved as a prerequisite to admission in L-1 classification.

IV. TN Professional Workers

Regulation

8 CFR Sec. 214.6 Citizens of Canada or Mexico seeking temporary entry under NAFTA to engage in business activities at a professional level. (Section heading revised 10/16/08; 73 FR 61332)

- (a) General. Under Section 214(e) of the of the Immigration and Nationality Act (INA), a citizen of Canada or Mexico who seeks temporary entry as a business person to engage in business activities at a professional level may be admitted to the United States in accordance with the North American Free Trade Agreement (NAFTA).
- (b) Definitions. As used in this section, the terms:

Business activities at a professional level means those undertakings which require that, for successful completion, the individual has a least a baccalaureate degree or appropriate credentials demonstrating status as a professional in a profession set forth in Appendix 1603.D.1 of the NAFTA.

Business person, as defined in the NAFTA, means a citizen of Canada or Mexico who is engaged in the trade of goods, the provision of services, or the conduct of investment activities.

Engage in business activities at a professional level means the performance of prearranged business activities for a United States entity, including an individual. It does not authorize the establishment of a business or practice in the United States in which the professional will be, in substance, self-employed. A professional will be deemed to be self-employed if he or she will be rendering services to a corporation or entity of which the professional is the sole or controlling shareholder or owner.

Temporary entry, as defined in the NAFTA, means entry without the intent to establish permanent residence. The alien must satisfy the inspecting CBP officer that the proposed stay is temporary. A temporary period has a reasonable, finite end that does not equate to permanent residence. In order to establish that the alien's entry will be temporary, the alien must demonstrate to the satisfaction of the inspecting CBP officer that his or her work assignment in the United States will end at a predictable time and that he or she will depart upon completion of the assignment.

(c) Appendix 1603.D.1 to Annex 1603 of the NAFTA. Pursuant to the NAFTA, an applicant seeking admission under this section shall demonstrate business activity and the minimum requirements for qualification at a professional level in one of the professions set forth in Appendix 1603.D.1.

Information to consider when processing a TN applicant



Canadian Citizen Admission

❖ A citizen of Canada who qualifies for admission under the NAFTA in the TN classification must remit the fee prescribed in 8 CFR 103.7 (presently \$50.00 U.S.) upon admission. Once paid, issue the applicant a fee receipt.

The employment letter must state the anticipated length of employment. (The length of validity to be granted by the CBP Officer will depend on the documentation

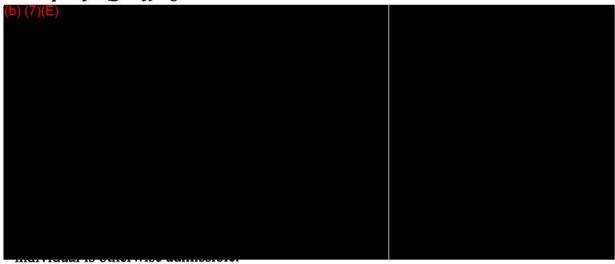
submitted.) (b) (7)(E)			
(b) (7)(E)			

Mexican Citizen Admission

- A citizen of Mexico seeking admission in the TN classification is required to present a valid TN visa issued by a U.S. consulate.
- The employment letter must state the anticipated length of employment. (The length of validity will depend on the documentation submitted.)



- ❖ Note: Only citizens of Canada pay the \$50.00 TN fee at the port-of-entry. This fee is not charged to Mexican citizens when applying for TN classification at the port-of-entry because fees have already been charged for issuance of the TN nonimmigrant visa.
- Example of a Qualifying TN



• Example of a Non-Qualifying TN



- POE Temporary Record Keeping
 - Maintaining accurate and up-to-date records is vital to the success of CBP. Good

record-keeping promotes better communication as well as continuity, consistency, efficiency and reinforces professionalism within the agency.

Any record keeping system should be accurate, reliable, easy to follow, consistent as to the basis used and be very simple. Good record keeping is vital in regards to past admission and refusal and providing information on which decisions for future admission can be based.



Processing Concurrent TN Applications for a Single Applicant

- A NAFTA applicant may be permitted to work for multiple employers in the U.S. at the same time.
- In order to work for multiple employers in the U.S., the TN applicant must present separate employment letters from each potential employer.
- A concurrent TN application is viewed as part of a single "event." The individual
 is applying for multiple TNs but is also applying for entry at the same time.
- A single fee will be charged for the "event" and not for each employment application. Refer to examples below:

Examples:



Processing NAFIA I rade Dependents

- Trade Dependents (TD) are the spouse and unmarried minor children who are accompanying or following to join a TN professional. If otherwise admissible, these individuals are to be accorded TD (Trade Dependent) classification.
 - These aliens are required to present a valid, unexpired nonimmigrant visa unless otherwise visa-exempt under 8 CFR 212.1.
 - There is no requirement that the TD dependent be a citizen of Canada or Mexico.
 - No fee is required for admission of dependents in TD status (except the fee for the Form I-94 if applying at a land border) and they should be issued a multiple entry Form I-94 valid for the same period of time as the principal or until the passport expiry date.
 - A TD spouse or child is not authorized to accept employment while in the United States in such status. Dependents in TD status may attend school in the United States on a part-time or full-time basis, as such attendance is deemed incidental to their status.

V. Intra-Company Transferees

• In General

- ❖ L-1A classification is for managers and executives.
- ❖ L-1B classification is for specialized knowledge aliens.
- ❖ L-2 classification is for dependents (dependents use Form I-539).

• Limitations on Stay

- ❖ Managers and executives (L-1A) may be employed in the United States for a maximum period of seven years.
- Specialized knowledge aliens (L-1B) may be employed in the United States for a maximum period of five years.
- ❖ Dependents may be admitted for a maximum period of time equivalent to the principal.

• Managerial Capacity Defined

- Managerial capacity means an assignment within an organization in which the employee <u>primarily</u>:
 - Manages the organization, or a department, subdivision, function, or component of the organization;
 - Either supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
 - Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

NOTE: All four criteria listed above must be met to qualify as a manager.

• Executive Capacity Defined

- Executive capacity means an assignment within an organization in which the employee <u>primarily</u>:
 - Directs the management of the organization or a major component or function of the organization;
 - Establishes the goals and policies of the organization, component, or function;
 - Exercises wide latitude in discretionary decision-making; and
 - Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization. [See 8 CFR 214.2(1)]

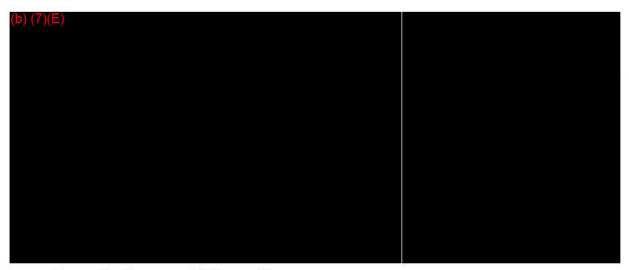
NOTE: All four criteria listed above must be met to qualify as an executive.

Evaluating Managerial or Executive Positions

- ❖ When evaluating the nature of a claimed managerial or executive position, the petition and supporting evidence must be reviewed to establish that the beneficiary's employment qualifies for L-1 purposes.
- The petitioner should describe the employer's business activities in a manner that allows the CBP officer to understand the products and services that are provided by the employer to its customers and how the beneficiary's position fits into the employer's organizational hierarchy.
- ❖ Frequently, the petitioner will merely reiterate the definitions of manager and executive as defined in statute and regulation; in the absence of other evidence to support such a contention, this is not sufficient to show that the alien is classifiable as a manager or executive.

Example of qualifying position

(b) (7)(E)



• Example of non-qualifying position



• L-1B Specialized Knowledge Defined

- Specialized knowledge means either:
 - special knowledge possessed by an individual of the petitioning organization's:
 - Product
 - Service
 - Research
 - Equipment
 - Techniques
 - Management, or
 - other interests and its application in international markets,

or

- An advanced level of knowledge or expertise in the organization's processes and procedures.
- Example #1: L-1B Qualifying Position



Note: There is no requirement that the alien's specialized knowledge be "unique" or "proprietary" to the prospective employer.

• Example #2: L-1B Non-Qualifying Position



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L-1 Processing under NAFTA

❖ Under NAFTA, a petitioner may file an individual Form I-129 Petition for a Nonimmigrant Worker, or Form I-129S Nonimmigrant Petition Based on Blanket L Petition, on behalf of a Canadian citizen for L-1 classification by having the beneficiary present the petition to CBP in conjunction with his/her application for admission at land border ports-of-entry or at designated Preclearance stations. In the case of the I-129S, the approval notice of the petitioner's blanket L petition is sufficient to establish the qualifying relationship between the U.S. and foreign companies. CBP officers must be familiar with the adjudication process of the Form I-129 and Form I-129S petitions for L-1 benefits and follow these procedures when adjudicating the L-1 application at a POE:





• Processing of L-1 dependents

- ❖ The spouse and children of an L-1 will be processed as L-2 nonimmigrant dependents of the L-1 principal alien.
- ❖ The L-2 must have the required family relationship with the principal alien.
- Must be accompanying or following to join the principal L-1. All nonimmigrant grounds of inadmissibility apply.
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Notes

- ❖ Employment authorization: Spouse and children may attend school without changing status. Following admission, the L-2 spouse may apply to USCIS for (and be issued) an employment authorization document, but the child(ren) of the L-1 principal alien may not work in L-2 status.
- NAFTA L dependents: Under the North American Free Trade Agreement, only the principal applicant need be a Canadian/Mexican citizen.

Attachment 1

Appendix 1603.A.1:

Business Visitors

Research and Design

• Technical, scientific and statistical researchers conducting independent research or research for an enterprise located in the territory of another Party.

Growth, Manufacture and Production

- Harvester owner supervising a harvesting crew admitted under applicable law.
- Purchasing and production management personnel conducting commercial transactions for an enterprise located in the territory of another Party.

Marketing

- Market researchers and analysts conducting independent research or analysis or research or analysis for an enterprise located in the territory of another Party.
- Trade fair and promotional personnel attending a trade convention.

Sales

- Sales representatives and agents taking orders or negotiating contracts for goods or services for an enterprise located in the territory of another Party but not delivering goods or providing services.
- Buyers purchasing for an enterprise located in the territory of another Party.

Distribution

- Transportation operators transporting goods or passengers to the territory of a Party from the territory of another Party or loading and transporting goods or passengers from the territory of a Party, with no unloading in that territory, to the territory of another Party.
- With respect to temporary entry into the territory of the United States, Canadian customs brokers performing brokerage duties relating to the export of goods from the territory of the United States to or through the territory of Canada.

- With respect to temporary entry into the territory of Canada, United States customs brokers
 performing brokerage duties relating to the export of goods from the territory of Canada to
 or through the territory of the United States.
- Customs brokers providing consulting services regarding the facilitation of the import or export of goods.

AfterSales Service

• Installers, repair and maintenance personnel, and supervisors, possessing specialized knowledge essential to a seller's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale of commercial or industrial equipment or machinery, including computer software, purchased from an enterprise located outside the territory of the Party into which temporary entry is sought, during the life of the warranty or service agreement.

General Service

- Professionals engaging in a business activity at a professional level in a profession set out in Appendix 1603.D.1.
- Management and supervisory personnel engaging in a commercial transaction for an enterprise located in the territory of another Party.
- Financial services personnel (insurers, bankers or investment brokers) engaging in commercial transactions for an enterprise located in the territory of another Party.
- Public relations and advertising personnel consulting with business associates, or attending or participating in conventions.
- Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions or conducting a tour that has begun in the territory of another Party.
- Tour bus operators entering the territory of a Party:
 - a) with a group of passengers on a bus tour that has begun in, and will return to, the territory of another Party;
 - b) to meet a group of passengers on a bus tour that will end, and the predominant portion of which will take place, in the territory of another Party; or
 - c) with a group of passengers on a bus tour to be unloaded in the territory of the Party into which temporary entry is sought, and returning with no passengers or reloading with the group for transportation to the territory of another Party.
- Translators or interpreters performing services as employees of an enterprise located in the territory of another Party.

Definitions

For purposes of this Appendix:

territory of another Party means the territory of a Party other than the territory of the Party into which temporary entry is sought;

tour bus operator means a natural person, including relief personnel accompanying or following to join, necessary for the operation of a tour bus for the duration of a trip; and

transportation operator means a natural person, other than a tour bus operator, including relief personnel accompanying or following to join, necessary for the operation of a vehicle for the duration of a trip.

Attachment 2

Appendix 1603.D.1

Professionals

PROFESSION ¹ MINIMUM EDUCATION REQUIREMENTS

AND ALTERNATIVE CREDENTIALS

General

Accountant Baccalaureate or Licenciatura Degree; or C.P.A., C.A.,

C.G.A. or C.M.A.

Architect Baccalaureate or Licenciatura Degree; or state/provincial

license ²

Computer Systems Analyst Baccalaureate or Licenciatura Degree; or PostSecondary

Diploma ³ or PostSecondary Certificate ⁴, and three years

experience

Disaster Relief Insurance Claims Adjuster (claims Adjuster employed by an insurance company located in

the territory of a Party, or an independent claims adjuster)

Baccalaureate or Licenciatura Degree, and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims;

or three years experience in claims adjustment and

successful completion of training in the appropriate areas

of insurance adjustment pertaining to disaster relief

claims.

Economist Baccalaureate or Licenciatura Degree

Engineer Baccalaureate or Licenciatura Degree; or state/provincial

license

Forester Baccalaureate or Licenciatura Degree; or state/provincial

license

Graphic Designer Baccalaureate or Licenciatura Degree; or PostSecondary

Diploma or PostSecondary Certificate, and three years

experience

Hotel Manager Baccalaureate or Licenciatura Degree in hotel/restaurant

management; or PostSecondary Diploma or PostSecondary Certificate in hotel/restaurant management, and three years experience in

hotel/restaurant management

Industrial Designer Baccalaureate or Licenciatura Degree; or PostSecondary

Diploma or PostSecondary Certificate, and three years

experience

Interior Designer Baccalaureate or Licenciatura Degree; or PostSecondary

Diploma or PostSecondary Certificate, and three years

experience

Land Surveyor Baccalaureate or Licenciatura Degree; or

state/provincial/federal license

Baccalaureate or Licenciatura Degree Landscape Architect

Lawyer (including Notary in the

Province of Ouebec)

Librarian

M.L.S. or B.L.S. (for which another Baccalaureate or

LL.B., J.D., LL.L., B.C.L. or Licenciatura Degree (five

Licenciatura Degree was a prerequisite)

years); or membership in a state/provincial bar

Baccalaureate or Licenciatura Degree; or equivalent Management Consultant

professional experience as established by statement or professional credential attesting to five years experience as a management consultant, or five years experience in a field of specialty related to the consulting agreement

Mathematician (including

Statistician)

Baccalaureate or Licenciatura Degree

Range Manager/Range

Conservationalist

Baccalaureate or Licenciatura Degree

Research Assistant (working in a

post-secondary educational

institution)

Scientific Technician/Technologist ⁵

Baccalaureate or Licenciatura Degree

Possession of (a) theoretical knowledge of any of the following disciplines: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics; and (b) the ability to solve practical problems in any of those disciplines, or the ability to apply principles of any of those disciplines

to basic or applied research

Baccalaureate or Licenciatura Degree Social Worker Sylviculturist (including Forestry

Specialist)

Baccalaureate or Licenciatura Degree

Technical Publications Writer Baccalaureate or Licenciatura Degree; or PostSecondary

Diploma or PostSecondary Certificate, and three years

experience

Urban Planner (including

Geographer)

Baccalaureate or Licenciatura Degree

Vocational Counsellor Baccalaureate or Licenciatura Degree

Medical/Allied Professional

Dentist D.D.S., D.M.D., Doctor en Odontologia or Doctor en

Cirugia Dental; or state/provincial license

Dietitian Baccalaureate or Licenciatura Degree; or state/provincial

license

Medical Laboratory Technologist Baccalaureate or Licenciatura Degree; or Post-Secondary

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(Canada)/Medical Technologist Diploma or Post-Secondary Certificate, and three years

(Mexico and the United States) 6 experience

Nutritionist Baccalaureate or Licenciatura Degree

Occupational Therapist Baccalaureate or Licenciatura Degree; or state/provincial

license

Pharmacist Baccalaureate or Licenciatura Degree; or state/provincial

license

Physician (teaching or research only) M.D. or Doctor en Medicina; or state/provincial license

Physiotherapist/Physical Therapist Baccalaureate or Licenciatura Degree; or state/provincial

license

Psychologist State/provincial license; or Licenciatura Degree

Recreational Therapist Baccalaureate or Licenciatura Degree

Registered Nurse State/provincial license; or Licenciatura Degree Veterinarian D.V.M., D.M.V. or Doctor en Veterinaria; or

state/provincial license

Scientist

Agriculturist (including Agronomist) Baccalaureate or Licenciatura Degree
Animal Breeder Baccalaureate or Licenciatura Degree

Animal Scientist Baccalaureate or Licenciatura Degree
Apiculturist Baccalaureate or Licenciatura Degree
Astronomer Baccalaureate or Licenciatura Degree

Biochemist Baccalaureate or Licenciatura Degree
Biologist Baccalaureate or Licenciatura Degree

Chemist Baccalaureate or Licenciatura Degree
Dairy Scientist Baccalaureate or Licenciatura Degree

Entomologist Baccalaureate or Licenciatura Degree Epidemiologist Baccalaureate or Licenciatura Degree

Geneticist Baccalaureate or Licenciatura Degree
Geologist Baccalaureate or Licenciatura Degree

Geochemist Baccalaureate or Licenciatura Degree

Geophysicist (including Baccalaureate or Licenciatura Degree

Oceanographer in Mexico and the

United States)

Horticulturist Baccalaureate or Licenciatura Degree

Meteorologist Baccalaureate or Licenciatura Degree
Pharmacologist Baccalaureate or Licenciatura Degree

Physicist (including Oceanographer in Baccalaureate or Licenciatura Degree

Canada)

Plant Breeder Baccalaureate or Licenciatura Degree
Poultry Scientist Baccalaureate or Licenciatura Degree
Soil Scientist Baccalaureate or Licenciatura Degree
Zoologist Baccalaureate or Licenciatura Degree

Teacher

College Baccalaureate or Licenciatura Degree
Seminary Baccalaureate or Licenciatura Degree
University Baccalaureate or Licenciatura Degree

¹ A business person seeking temporary entry under this Appendix may also perform training functions relating to the profession, including conducting seminars.

² "State/provincial license" and "state/provincial/federal license" mean any document issued by a state, provincial or federal government, as the case may be, or under its authority, but not by a local government, that permits a person to engage in a regulated activity or profession.

³ "Post-Secondary Diploma" means a credential issued, on completion of two or more years of postsecondary education, by an accredited academic institution in Canada or the United States.

⁴ "Post-Secondary Certificate" means a certificate issued, on completion of two or more years of postsecondary education at an academic institution, by the federal government of Mexico or a state government in Mexico, an academic institution recognized by the federal government or a state government, or an academic institution created by federal or state law.

⁵ A business person in this category must be seeking temporary entry to work in direct support of professionals in agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics.

⁶ A business person in this category must be seeking temporary entry to perform in a laboratory chemical, biological, hematological, immunologic, microscopic or bacteriological tests and analyses for diagnosis, treatment or prevention of disease.

Attachment 3

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Applicant's Name	
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