



U.S. Department of Justice
Immigration and Naturalization Service

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MEMORANDUM FOR REGIONAL DIRECTORS

THROUGH: (b) (6), (b) (7)(C)
EXECUTIVE ASSOCIATE COMMISSIONER
OFFICE OF FIELD OPERATIONS

FROM: (b) (6), (b) (7)(C)
Executive Associate Commissioner
Policy and Planning

SUBJECT: Processing of Applicants for Admission under The North American Free Trade Agreement

This memorandum is being issued as a review and revision of Chapter 15.5 of the Inspector's Field Manual (IFM) to clarify and emphasize procedures relating to the processing of applicants for admission under the provisions of the North American Free Trade Agreement (NAFTA).

The NAFTA accord, which became effective on January 1, 1994, facilitates the movement of United States, Canadian and Mexican business persons across each country's border through streamlined procedures. The NAFTA maintains the provisions of existing laws insuring border security and protecting labor and permanent employment.

For professionals who are Canadian citizens seeking entry to engage in a profession set out in Appendix 1603.D.1, it is contrary to the NAFTA to require prior approval procedures, petitions, labor certification tests or other procedures of similar effect as a condition for temporary entry. There currently are disparities among ports of entry with regard to processing TN and L-1 applicants that are in conflict with the NAFTA accord and with 8 CFR 214.2. Accordingly Chapter 15.5 sections (a), (e)(2)(A), (f)(3) and (f)(4)(A) of the IFM are revised to read as follows:

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15.5 NAFTA Admissions.

(a) General. The North American Free Trade Agreement (NAFTA) between the United States, Canada, and Mexico entered into force on January 1, 1994. Chapter 16 of NAFTA pertains to Canadian and Mexican citizens seeking classification as one of four types of business persons:

- **B-1** temporary visitors for business under section 101(a)(15)(B) of the Act;
- **E-1 or E-2** treaty traders and treaty investors under section 101(a)(15)(E) of the Act;
- **L-1** intracompany transferees under section 101(a)(15)(L) of the Act; and
- **TN** professional level employees under section 214(e) of the Act.

The NAFTA is an historic accord governing the largest trilateral trade relationship in the world and covers trade in goods, services, and investments. NAFTA facilitates the movement of U.S., Canadian, and Mexican businesspersons across each country's border through streamlined procedures. The NAFTA maintains the provisions of existing laws that ensure border security and protect indigenous labor and permanent employment. Further, NAFTA fully protects the ability of state governments to require that Canadians and Mexicans practicing a profession in the United States are fully licensed under state law to do so. Current U.S. law and practice relating to exclusion and deportation of aliens applies unchanged to all business persons seeking temporary entry under the provisions of Chapter 16 of the NAFTA.

The immigration-related provisions of NAFTA are similar to those contained in the United States-Canada Free-Trade Agreement (CFTA), which was suspended with the entry into force of NAFTA.

The NAFTA is an international agreement subject to scrutiny by the public, the media, other governments and the Temporary Entry Working Group. INS inspectors must maintain the highest standards of objectivity, courtesy and professionalism when processing applicants for admission.

(e) L Classification as an Intracompany Transferee.

(2) **Terms of Admission.** A petition must be filed in the applicant's behalf to accord the alien classification as an L-1. The petition must be submitted by the qualifying entity to the Service on Form I-129, Petition for Temporary Worker, in accordance with the instructions for that form. The Service will provide the NAFTA intracompany transferee and dependents with Forms I-94 at the time of admission, endorsed in the same manner as other class L admissions. The I-94 is the employment authorization document for the L-1 and may be presented to the Social Security Administration for the purpose of applying for a social security number. Periods of admission and extension for NAFTA L aliens are the same as for other L nonimmigrants.

(A) **Citizens of Canada.** A citizen of Canada is not required to, but may obtain, a nonimmigrant visa. The applicant must establish Canadian citizenship.

The I-129 petition may be filed (in duplicate) by the U.S. or foreign employer in advance of entry or in conjunction with an application for admission. If the alien wishes to file in advance, the petition must be submitted to the appropriate Service Center and should be submitted at least 30 days in advance of the expected date of entry. The applicant must present evidence of the approved petition (form I-797, Notice of Approval) at the time of application for admission. If the petition is filed in conjunction with an application for admission, such filing must be made in person with an immigration officer at a Class A port-of-entry located on the US-Canada land border or at an U.S. pre-clearance/pre-flight station in Canada. Petitions may not be submitted to a port-of-entry in advance. The petitioning employer need not appear, but the Form I-129 must bear the authorized signature of the petitioner and all documentation and the appropriate filing fee must accompany the petition. The port of entry may accept appointments but the use of appointments may not preclude an applicant who did not make an appointment from being processed at the time of his/her application for admission. The I-129 petition is complex and requires sufficient time for review by the processing officer. The burden of processing time rests with the applicant not with the Service. Applicants for admission filing I-129 petitions at

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pre-flight locations in Canada must allow sufficient time prior to the departure of their flight for processing.

(f) TN Classification as a Professional.

(3) **Qualifications.** The NAFTA professional must meet the following general criteria:

- Be a citizen of a NAFTA country (Canada or Mexico).
- Be engaged in professional-level activities for an entity in the United States. Only those professional-level activities listed in Appendix 1603.D.1 to Annex 1603 are covered under the NAFTA. The applicant must establish that the professional-level services will be rendered for an entity in the United States. The NAFTA professional category is not appropriate for Canadian or Mexican citizens seeking to set up a business in the United States in which he or she will be self-employed.
- Be qualified as a professional. The applicant must establish qualifications to engage in one of the activities listed in Appendix 1603.D.1. The Minimum Education Requirements and Alternative Credentials are listed in the Appendix for each professional-level activity. The regulation requires that degrees, diplomas, or certificates received by the TN applicant from an educational institution outside of the United States, Canada, or Mexico must be accompanied by an evaluation by a reliable credentials evaluation service that specializes in such evaluations. Experiential evidence should be in the form of letters from former employers. If the applicant was formerly self-employed, business records should be submitted attesting to that self-employment.
- Meet applicable license requirements. To practice a licensed profession, Canadian and Mexican entrants must meet all applicable requirements of the state in which they intend to practice.

Note: In certain circumstances, although a profession may generally require licensing, there may be duties within the occupation that do not require licensing. For example, an architect must be licensed to sign architectural plans, etc. but not all professional-level duties of an architect require licensure (an architect can work on development of plans but be precluded from signing the plans).

Similarly, a dentist requires a license in the U.S. to practice dentistry but if a Canadian citizen is coming to the U.S. as a TN to give a seminar on dentistry, no U.S. license would be necessary. The Canadian may establish qualifications as a dentist by showing a provincial license or a D.D.S., D.M.D., Doctor en Odontologia en Cirugia Dental.

This is analogous to the lawyer who seeks admission as a TN to offer professional-level legal advice about Canadian law but who is not going to practice before any state bar in the U.S.-- this Canadian citizen would need only to establish qualification as a lawyer-- a J.D. or provincial bar membership could suffice.

- Be in the United States temporarily. The NAFTA professional must establish that the intent of entry is not for permanent residence.

(4) Application Process.

- (A) **Citizens of Canada.** A citizen of Canada may apply for entry to the U.S. as a NAFTA professional at major ports-of-entry, airports handling international flights, or at the airports in Canada where the Service has established a pre-clearance/pre-flight station. The applicant must submit documentary proof that he or she is a citizen of Canada. Such proof may consist of a Canadian passport or birth certificate together with photo identification. No visa is required for entry, but the applicant may seek visa issuance if desired.

An application for entry as a TN professional is an application for admission. It must be made, in person, to an immigration officer at the same time the individual is applying for admission to the United States. There

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is no written application for entry as a TN professional. No prior petition, labor certification, or prior approval may be required for Canadian citizens applying for admission to the U.S. in TN status. Advance adjudication of a TN applicant prior to the actual application for admission is not appropriate. Prior approval procedures are not permissible under Annex 1603.D.2(a) of the NAFTA. The applicant must be interviewed regarding his or her qualifications for the profession.

Documentation from the prospective employer in the U.S., or from the foreign employer, must include the following:

- A statement (in the form of a letter or contract) of the professional-level activity listed in Appendix 1603.D.1, in which the applicant will be engaging and a full description of the nature of the job duties the applicant will be performing, the anticipated length of stay, and the arrangements for remuneration;
- Evidence that the applicant meets the educational qualifications or alternative credentials for the activity listed in Appendix 1603.D.1; and
- Evidence that all licensure requirements, where required by state or local law, have been satisfied. {Please refer to note regarding license requirements in 15. 5(f)(3)}

These revisions to the IFM will be incorporated into future releases of the INS Easy Research and Transmittal System (INSERTS). Resource and training materials for Immigration Inspectors processing applicants for Admission under The North American Free Trade Agreement are being developed.

There are no changes to the IFM concerning Mexican TN or L-1 procedures. Employers seeking the services of a Mexican TN in a profession set out in appendix 1603.D.1 must petition the Service on Form I-129L. Form I-129L should be filed with the Director, Nebraska Service Center, prior to application for a nonimmigrant visa and admission at a Port-of-Entry. Employers seeking the services of a Mexican L-1 must petition the Service on Form I-129. Form I-129 should be filed with the Service Center having jurisdiction over the area where the Mexican L-1 will be employed.

Please direct any questions relating to procedures for processing applicants for admission under the North American Free Trade Agreement to (b) (6), (b) (7)(C) at (b) (6), (b) (7)(C)