

Inspector's Field Manual

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. When filing in advance, the petition should be submitted to the appropriate Service Center at least 30 days in advance of the expected date of entry. The applicant must present evidence of the approved petition at the time of application for admission. If the petition is filed with an application for admission, such filing must be made with an immigration officer at a Class A port-of-entry located on the US-Canada land border or at a U.S. pre-clearance/pre-flight station in Canada. 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.

(B) **Citizens of Mexico.** A citizen of Mexico must apply for an L visa at an American consulate. At the port-of-entry, the applicant must present a valid Mexican passport with their L-1 visa.

(3) **Spouses and Dependent Children.** Spouses and dependent children of intracompany transferees may accompany or follow to join the L-1 principal if they otherwise meet the general immigration requirements for temporary entry. L-2 is the designated classification for both spouse and dependent children of intracompany transferees. There is no requirement that the spouse and dependent children be citizens of Canada or Mexico. L-2 dependents who are citizens of Canada are not required to obtain an L-2 visa but may seek visa issuance if desired. L-2 dependents who are citizens of Mexico or other countries generally are required to seek visa issuance. L-2's may not work in the United States. L-2's may attend school while in the United States incident to their temporary stay.

(f) **TN Classification as a Professional.**

(1) **General.** The NAFTA professional is unique to the Agreement and the classification is not found in general immigration provisions in section 101(a)(15) of the Act, rather, it is included in section 214(e). Under NAFTA, a Canadian or Mexican citizen who seeks temporary entry into the United States as a professional may be admitted to the United States under the provisions of the NAFTA as a TN (for Trade NAFTA). The TN is limited to Canadian or Mexican professionals employed on a professional level. A professional is defined as a business person seeking entry to engage in a business activity at a professional level in a profession set forth in Appendix 1603.D.1 to Annex 1603, if the business person otherwise qualifies under existing, general immigration requirements for temporary entry to the United States [See Appendix 15-4 of this manual for Annex 1603, Appendix 1603.D.1.] [For regulations relating to NAFTA TN classification, refer to 8 CFR 214.6].

The NAFTA professional is modeled on the professional category in the predecessor trade pact, the United States-Canada Free-Trade Agreement (CFTA), which was in effect from January 1, 1989 until the entry into force of the NAFTA on January 1, 1994. The provisions differ slightly for Canadian citizen applicants and Mexican citizen applicants. Presently, the number of Mexican citizens entering the United States as TN professionals under NAFTA is limited to 5,500. There is no numerical limitation on the number of Canadian citizen TN professionals.

As with the CFTA, admission as a TN under section 214(e) of the Act does not imply that the citizen of Canada or Mexico would otherwise qualify as a professional under sections 101(a)(15)(H)(i) or 203(b)(3) of the Act. Note too that Section D of Annex 1603 does not authorize a professional to establish a business or practice in the United States in which the professional will be self-employed. Canadian or Mexican citizens seeking to engage in self-employment in trade or investment activities in the United States must seek classification under section 101(a)(15)(E) of the Act.

(2) **Appendix 1603.D.1 to Annex 1603 of the NAFTA.** Under NAFTA, an applicant seeking classification as a TN must demonstrate business activity at a professional level in one of the professions or occupations listed in Appendix 1603.D.1 to Annex 1603. Appendix 1603.D.1 (which replaces Schedule 2 to Annex 1502.1 of the CFTA) is set forth at 8 CFR 214.6(c). A Baccalaureate (bachelor's) or Licenciatura degree is the minimum requirement for these professions unless an alternative credential is otherwise specified. In the case of a Canadian or Mexican citizen whose occupation does not appear on Appendix 1603.D.1 or who does not meet the transparent criteria specified, nothing precludes the filing of a petition for classification under another existing nonimmigrant classification.

A footnote to Appendix 1603.D.1 allows for temporary entry to perform training functions relating to any of the

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cited occupations or profession, including conducting seminars. However, these training functions must be conducted in the manner of prearranged activities performed for a U.S. entity and the subject matter to be proffered must be at a professional level. The training function does not allow for the entry of a business person to conduct seminars which do not constitute the performance of prearranged activities for a U.S. entity.

The terms "state/provincial license" and "state/provincial/federal license" means 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.

A "Post Secondary Diploma" means a credential issued, on completion of two or more years of post secondary education, by an accredited academic institution in Canada or the United States. A "Post Secondary Certificate" means a certificate issued, on completion of two or more years of post secondary 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.

The following notes relate to NAFTA TN admissions in specific occupations:

(A) A business person in the category of "Scientific Technician/Technologist" must be seeking temporary entry for work in direct support of professionals in agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics. These occupations do not ordinarily require a baccalaureate. Supporting documents could be an attestation from the prospective U.S. employer or the Canadian employer, or other documents establishing the individual possesses the skills set forth in Appendix 1603.D.1.

(B) A business person in the category of "Medical Laboratory Technologist (Canada) /Medical Technologist (Mexico and the United States)" 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 diseases.

(C) Foreign medical school graduates seeking temporary entry in the category of "Physician (teaching or research only)" may not engage in direct patient care. Patient care that is incidental teaching and/or research is permissible. Patient care is incidental when it is casually incurred in conjunction with the physician's teaching or research. To determine if the patient care will be incidental, factors such as the amount of time spent in patient care relative to teaching and/or research, whether the physician receives compensation for such services, whether the salary offer is so substantial in teaching and/or research that direct patient care is unlikely, or whether the physician will have a regular patient load, should be considered by the officer.

(D) Registered nurses must demonstrate eligibility by providing a provincial or state license or Licenciatura degree. However, in order to be admitted, the registered nurse must present a permanent state license, a temporary state license, or other temporary authorization to work as a registered nurse, issued by the state nursing board in the state of intended employment. Registered nurses holding temporary state licenses or other temporary state authorization shall not be required to show they have passed the examination given by the Commission on Graduates of Foreign Nursing Schools (CGFNS). Admission of nurses should not be limited to the expiration date of either document.

(E) Sylviculturists and foresters plan and supervise the growing, protection, and harvesting of trees. Range managers manage, improve, and protect rangelands to maximize their use without damaging the environment. A baccalaureate or Licenciatura degree in forestry or a related field or a state/provincial license is the minimum entry requirement for these occupations.

(F) Disaster relief insurance claims adjusters must submit documentation that there is a declared disaster event by the President of the United States, or a state statute, or a local ordinance, or an event at a site which has been assigned a catastrophe serial number by the Property Claims Service of the American Insurance Services Group, or, if property damage exceeds \$5 million and represents a significant number of claims, by an association of insurance companies representing at least 15 percent of the property casualty market in the U.S.

(G) Management consultants provide services which are directed toward improving the managerial, operating, and economic performance of public and private entities by analyzing and resolving strategic and

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operating problems and thereby improving the entity's goals, objectives, policies, strategies, administration, organization, and operation. Management consultants are usually independent contractors or employees of consulting firms under contracts to U.S. entities. They may be salaried employees of the U.S. entities to which they are providing services only when they are not assuming existing positions or filling newly created positions. As a salaried employee of such a U.S. entity, they may only fill supernumerary temporary positions. On the other hand, if the employer is a U.S. management consulting firm, the employee may be coming temporarily to fill a permanent position. Canadian or Mexican citizens may qualify as management consultants by holding a Baccalaureate or Licenciatura degree or by having five years of experience in a specialty related to the consulting agreement.

(H) The computer systems analyst category does not include programmers. A systems analyst is an information specialist who analyzes how data processing can be applied to the specific needs of users and who designs and implements computer-based processing systems. Systems analysts study the organization itself to identify its information needs and design computer systems which meet those needs. Although the systems analyst will do some programming, the TN category has not been expanded to include programmers.

(I) Hotel Managers must possess a Baccalaureate or Licenciatura degree in hotel/restaurant management. A post secondary diploma in hotel/restaurant management plus 3 years of experience in the field will also qualify.

(J) Animal and Plant Breeders breed animals and plants to improve their economic and aesthetic characteristics. Both occupations require a Baccalaureate or Licenciatura degree.

(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 which 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.
- 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.

The application for entry as a TN must be made to an immigration officer. There is no written application, and no prior petition, labor certification, or prior approval is required for Canadian citizens applying for admission to the U.S. in TN status. Documentation from the prospective employer in the U.S. must include the following:

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- 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.

(B) **Citizens of Mexico.** A citizen of Mexico may apply for entry to the U.S. as a NAFTA professional at major land border ports-of-entry, airports handling international flights, or at the airports in Canada where the Service has established a pre-clearance/pre-flight station. However, a citizen of Mexico must be in possession of a TN nonimmigrant visa issued by an American Consulate and present a valid Mexican passport.

Citizens of Mexico seeking classification as a TN must do so on the basis of a petition filed by the U.S. employer. Before filing the petition, the employer must meet the labor application requirement of section 212(n) of the Act.

Each prospective U.S. employer must file the petition on Form I-129, Petition for Nonimmigrant Worker, with the Nebraska Service Center, even in emergent circumstances, with the following:

- Evidence that the applicant is a citizen of Mexico;
- Evidence that the employer has filed with the Secretary of Labor Form ETA 9035 to show that the petitioner has met the labor condition application requirement of section 212(n) of the Act;
- A statement of the activity listed in Appendix 1603.D.1 in which the beneficiary will be engaging, a full description of the nature of the duties the beneficiary will be performing, the anticipated length of stay, and the arrangements for remuneration;
- Evidence that the applicant meets the educational and/or alternative credentials for the activity listed in Appendix 1603.D.1; and
- Evidence that all applicable state or local licensure requirements have been satisfied.

The Service will provide the U.S. employer with a written decision approving or denying the petition. The applicant must then present the approval notice to the consular official when applying for a TN visa. There is a fee to apply for a TN visa. A petition classifying a citizen of Mexico as a TN professional may be approved for up to 1 year. In the case of a petition denial, full appeal rights through the Administrative Appeals Unit are available to the petitioner.

(5) **Terms of Initial Admission.**

(A) **Canadians.** A Canadian citizen who qualifies for admission under the NAFTA in the TN classification must remit the fee prescribed in 8 CFR 103.7 (presently \$50.00 US) upon admission. Issue the applicant a Service fee receipt (Form G-211, Form G-711, or Form I-797) and a multiple entry Form I-94 showing admission in the classification TN for the period requested not to exceed 1 year.

(B) **Mexicans.** A Mexican citizen seeking admission in TN classification is required to present a valid TN visa issued by an American Consulate. In addition to the visa requirement, the Mexican citizen must present at the time of application for initial admission a copy of the employer's statement regarding the nature of the applicant's duties in the United States. Admit a Mexican TN for the validity period of the approved petition and issue a multiple entry Form I-94 showing admission classification as TN. (Note that only citizens of Canada pay the 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 are charged for filing the I-129 petition and for issuance of the TN nonimmigrant visa.)

At the time application for admission, the citizen of Canada or Mexico will be subject to inspection to determine the applicability of section 214(b) of the Act (presumption of immigrant intent) to the applicant.

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(6) Procedures for Readmission.

(A) **Canadians.** A Canadian citizen eligible for TN classification may be readmitted to the U.S. for the remainder of the period authorized on his or her Form I-94, without presentation of the letter or supporting documentation described above, provided that the original intended business activities and employer(s) have not changed. If the Canadian citizen is no longer in possession of a valid, unexpired Form I-94, the applicant must present substantiating evidence. Substantiating evidence may be in the form of a Service fee receipt for admission as a TN, a previously issued TN admission stamp in a passport, and a confirming letter from the U.S. employer(s). Upon readmission, issue a new multiple entry Form I-94.

(B) **Mexicans.** The citizen of Mexico who is in possession of a valid Form I-94 may be readmitted for the remainder of the time authorized provided that the original intended professional activities and employer(s) have not changed and should retain possession of that original Form I-94. If no longer in possession of a valid Form I-94 (e.g. a citizen of Mexico seeking readmission upon return from a trip to Europe), the Mexican citizen may be readmitted upon presentation of a valid TN visa and evidence of prior admission. Evidence of prior admission may include, but is not limited to, an INS fee receipt from a prior entry or an admission stamp in the applicant's passport. Upon readmission, a new I-94 shall be issued bearing the legend "multiple entry."

(7) Extension of stay.

(A) **Canadians.** A citizen of Canada admitted pursuant to NAFTA may seek an extension of stay as a TN through the filing of a Form I-129 by the U.S. employer with the Nebraska Service Center. No Department of Labor certification requirements apply to a Canadian citizen in TN status who is seeking to extend that status. The applicant must be in the U.S. at the time of filing the extension request. Provision is made for port-of-entry notification should the applicant depart the U.S. during the pendency of the application. An extension may be granted for up to 1 year.

A citizen of Canada is not precluded from departing the U.S. and applying for admission with documentation from a U.S. employer (or foreign employer, in the case of a Canadian citizen who is seeking to provide prearranged services at a professional level to a U.S. entity) which specifies that the applicant will be employed in the U.S. for an additional period of time. The evidentiary requirements outlined above must be met by the applicant and the prescribed fee must be remitted upon admission.

(B) **Mexicans.** A citizen of Mexico seeking an extension of stay in the U.S. in TN status also must be petitioned for on Form I-129 at the Nebraska Service Center. Documentary requirements include evidence that Department of Labor certification requirements continue to be met by the employer. Provision is included for consular notification should the applicant leave the U.S. during the pendency of the application. A petition extension and extension of the applicant's stay may be granted for up to 1 year.

(C) **Limitations.** At the present time, there is no specified upper limit on the number of years a citizen of Canada or Mexico may remain in the U.S. in TN classification, as there is with most of the other nonimmigrant classifications. However, section 214(b) of the Act is applicable to citizens of Canada or Mexico who seek an extension of stay in TN status and applications for extension or readmission must be examined in light of this statutory provision.

Except as limited by section 248 of the Act, a citizen of Canada or Mexico who is currently in the U.S. in another valid classification is not precluded from requesting a change of status to TN. If such applicant is in the U.S. as an H-1 or L-1, he or she may be changed to TN status if otherwise eligible, without regard to the maximum time limits for those classifications. A Canadian J nonimmigrant who is subject to the 2-year foreign residence requirement may not change to TN classification, but may leave the U.S. and seek readmission as a TN.

(8) **Request for change/additions of U.S. employers.** A Canadian or Mexican citizen may change or add employers while in the U.S. through the filing of Form I-129 at the Northern Service Center. All documentary requirements pertaining to a citizen of Canada or a citizen of Mexico outlined above must be met. Employment with a different or with an additional employer is not authorized prior to INS approval of the petition.

Alternatively, the Canadian citizen may depart the United States and apply for reentry for the purpose of obtaining additional employment authorization with a new or additional employer. Documentary

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requirements outlined above must be met and the prescribed fee must be remitted upon readmission.

No action is required by a Canadian or Mexican citizen who is transferred to another location by the U.S. employer to perform the same services. An example of such an acceptable transfer would be to a branch or office of the employer. If the transfer is to a separately incorporated subsidiary or affiliate, Form I-129 must be filed.

(9) **Spouse and unmarried minor children.** The spouse and unmarried minor children who are accompanying or following to join a TN professional, if otherwise admissible, are to be accorded TD (Trade Dependent) classification. These are required to present a valid, unexpired nonimmigrant visa unless otherwise visa-exempt under 8 CFR 212.1. (Those persons who are normally exempt from nonimmigrant visa requirements include citizens of Canada and Landed Immigrants of Canada having a common nationality with Canadian citizens).

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 I-94) and they are to be issued multiple entry Forms I-94.

A TD spouse or child is not authorized to accept employment while in the U.S. in such status. Dependents in TD status may attend school in the U.S. on a full-time basis as such attendance is deemed incident to status.

(10) **Denial.** In the event a Canadian citizen applying for admission pursuant to NAFTA cannot demonstrate to the admitting officer that he or she satisfies the TN documentary requirements, the Canadian citizen should be offered a hearing before an immigration judge provided the applicant is confident he or she, in fact, meets the requirements pursuant to the NAFTA, Appendix 1603.D.1 The request for a hearing is equivalent to a TN appeal or a reconsideration of the admitting officer's decision.

15.6 Transit without Visa (TWOV) Admissions.

(a) **General description.** An alien in immediate and continuous transit through the U.S. without a visa may be admitted under certain restrictions. Admission procedures are significantly different than for other nonimmigrants. Only a carrier signatory to a TWOV agreement may bring a TWOV applicant to the U.S., and only to specific ports-of-entry. TWOV agreements are provided for by section 233 of the Act and discussed in Chapter 42. Ports-of-entry for TWOV passengers are listed in 8 CFR 214.2(c). The list of carriers with TWOV agreements is contained in Appendix 42.1. Aliens of certain nationalities are only eligible for limited TWOV privileges as specified in 8 CFR 212.1(f)(2). Citizens, or in some instances residents, of certain countries are barred from TWOV privileges entirely, as specified in 8 CFR 212.1(f)(3). TWOV carriers are liable for "liquidated damages" whenever an arriving TWOV passenger fails to depart as scheduled. Liquidated damages procedures are discussed in Chapter 43.

(b) **Documents required.** TWOV applicants are exempt passport and visa valid for entry into the U.S., but must be in possession of a travel document or documents establishing his/her identity and nationality and ability (including any required visa) to enter the country to which destined, other than the U.S. [See 8 CFR 212.1(f)(1)]. Each TWOV passenger must have a *confirmed* transportation ticket to depart from the U.S. within 8 hours or on the first available transportation. A maximum of two stopovers en route is permitted.

(c) **Processing procedures.** Each arriving TWOV passenger should present a blue I-94T along with other required documents stated above. Enter the appropriate carrier arrival and departure information including the departure ticket number (normally a 13-digit number, taken from the ticket segment showing travel to the foreign destination) in the shaded blocks on the lower front of the arrival portion of I-94T. It is critical that all information on the I-94T be complete, correct and legible, since the form is the basis on which the Service can assess damages in the event the passenger fails to depart. Staple the departure I-94 to the outbound ticket coupon and retain the arrival I-94 at the port. Stamp the passport with the admission stamp and endorse it "TWOV". Once the admission process is complete, turn the passenger and documents over to the arrival carrier, in accordance with local port procedures.

(d) **Processing Ineligible and Mala Fide TWOV Applicants; TWOV Abscondee.** If you determine a TWOV applicant is technically ineligible for that classification or is not a bona-fide transit passenger, first determine if