

**UNCLASSIFIED (U)**

## **9 FAM 402.17**

# **NAFTA PROFESSIONALS – TN AND TD VISAS**

*(CT:VISA-1151; 09-14-2020)*  
*(Office of Origin: CA/VO)*

## **9 FAM 402.17-1 STATUTORY AND REGULATORY AUTHORITIES**

### **9 FAM 402.17-1(A) Immigration and Nationality Act**

*(CT:VISA-1; 11-18-2015)*

INA 214(e) (8 U.S.C. 1184(e)); INA 214(j) (8 U.S.C. 1184(j)).

### **9 FAM 402.17-1(B) Code of Federal Regulations**

*(CT:VISA-1; 11-18-2015)*

22 CFR 41.59.

### **9 FAM 402.17-1(C) Treaties and International Agreements**

*(CT:VISA-596; 06-01-2018)*

North American Free Trade Agreement (NAFTA).

## **9 FAM 402.17-2 OVERVIEW**

*(CT:VISA-596; 06-01-2018)*

The North American Free Trade Agreement (NAFTA) created special economic and trade relationships for the United States, Canada, and Mexico. The nonimmigrant NAFTA Professional (TN) visa allows citizens of Canada and Mexico, as NAFTA professionals, to work in the United States in prearranged, professional level, business activities for U.S. or foreign employers.

### **9 FAM 402.17-2(A) Background**

*(CT:VISA-350; 04-20-2017)*

- a. On December 17, 1992, the Presidents of the United States and Mexico and the Prime Minister of Canada entered into the North American Free Trade Agreement (NAFTA). The North American Free Trade Agreement Implementation Act (NAFTA Implementation Act), Public Law 103-182, implementing the agreement was signed into law on January 1, 1994. To comply with this Agreement, INA 214(e) was added in order to provide for the admission to the United States of Mexican and Canadian citizens who are coming to engage in professional activities.
- b. Chapter 16 of NAFTA, entitled "temporary entry for business persons" was designed to facilitate the movement of business persons among the United States, Canada, and Mexico. This chapter contains the visa-related provisions relating to the temporary entry of business persons. NAFTA allows investment, trade, and professional commerce services to take place, and thus affects four nonimmigrant visa (NIV) categories in the U.S. Immigration and Nationality Act: Temporary Visitors for business (B-1); Treaty Trader and Investors (E); Intra-company transferees (L), and NAFTA professionals (TN).
- c. The U.S.-Canada Free Trade Agreement (US-CFTA) created a class of professional nonimmigrants (TC) but did not provide authority for visa issuance. NAFTA has modified and adopted the TC professional category and treats this new admission category (TN) as if it were a nonimmigrant visa (NIV) classification under INA 101(a)(15), thus authorizing the issuance of visas to both Mexicans and Canadians. (TD visas are issued to spouse and minor children of TN principals.) The US-CFTA was suspended when NAFTA entered into force. The TN category must not be confused with the H-1B visa classification. It is a separate and distinct category. Similarities do exist, however, since this category was derived from the H-1B classification.

## **9 FAM 402.17-2(B) Countries that Benefit from NAFTA**

*(CT:VISA-1; 11-18-2015)*

Only citizens of the North American Free Trade Agreement (NAFTA) parties (Canada, Mexico, and the United States) may benefit from the agreement. Permanent resident status in any NAFTA party country does not in itself confer any benefits under this chapter of the agreement.

## **9 FAM 402.17-3 CLASSIFICATION SYMBOLS**

*(CT:VISA-1; 11-18-2015)*

22 CFR 41.12 identifies the following visa classification symbols for NAFTA professionals in accordance with INA 214(e):

|    |                                       |
|----|---------------------------------------|
| TN | NAFTA Professional                    |
| TD | Spouse or Child of NAFTA Professional |

## 9 FAM 402.17-4 PROFESSIONAL REQUIREMENTS

### 9 FAM 402.17-4(A) Member of a Profession

*(CT:VISA-596; 06-01-2018)*

- a. This category ("TN") extends visa classification only to citizens of a NAFTA signatory country who are members of a profession listed in Appendix 1603.D.1 of NAFTA, chapter 16.
- b. The alien must meet the specific requirements, education, and/or experience, etc. listed in the annex related to that particular profession. Significantly, the TN classification of members of a profession is a stand-alone category, and should not be confused with the H-1B classification. With certain exceptions, each TN profession requires a baccalaureate degree as an entry-level requirement. If a baccalaureate is required, experience cannot be substituted for that degree. In some professions, alternative criteria to a bachelor's degree are listed, and sometimes experience and criteria are required in addition to the degree. The list is occasionally expanded upon agreement of all NAFTA parties.
- c. You should always review Appendix 1603.D.1 of NAFTA, Chapter 16 to make sure that the alien's job title is listed and that the alien possesses the education and/or experience level that is commensurate with that job title. You also should confirm that the applicant actually will perform the duties associated with the listed profession, and not the duties of a similar but distinct profession for which TN classification is inappropriate. For example, on November 20, 2017, USCIS released a policy memorandum for evaluating applications where "Economist" is listed as the profession. The memo specifically notes that the alien must engage in activities consistent with the profession of an economist. The profession of economist must not primarily include the activity of other occupations, such as, but not limited to, those performed by financial analysts, market research analysts, and marketing specialists. The memo also notes that, when determining TN eligibility, the focus should be on the nature of the duties of the occupation itself, rather than job title used. For assistance in determining the nature of various jobs and professions, you can consult the Occupational Outlook Handbook, published by the Bureau of Labor Statistics, and available online.

### 9 FAM 402.17-4(B) License Not Required

*(CT:VISA-1060; 04-24-2020)*

- a. The list of professions reveals requirements for admission into the United States under immigration provisions. Such requirements for admission or classification as a NAFTA professional do not include licensure in the United States. Licensure to practice a given profession in the United States is a

post-entry requirement subject to enforcement by the appropriate state or other non-Federal authority.

- b. Proof of licensure to practice a given profession in the United States may be offered along with a job offer letter or other documentation in support of an application for TN classification. But admission/classification must not be denied based solely on the fact that the applicant does not already hold a license to practice in the United States.
- c. For a TN position as a nurse providing health care services, 22 CFR 40.53(a) requires that in addition to meeting all other requirements of law and regulation, the alien must have a certification issued by the Commission On Graduates of Foreign Nursing Schools or another credentialing service that has been approved by the Secretary of Homeland Security for such purpose, which certificate complies with the provisions of INA 212(a)(5)(C) and INA 212(r) and the regulations found at 8 CFR 212.15.

## 9 FAM 402.17-5 EMPLOYMENT REQUIRED

### 9 FAM 402.17-5(A) Employment

*(CT:VISA-606; 06-14-2018)*

The alien must engage in a prearranged business activity at a professional level for a U.S. or foreign employer.

- (1) **Employment Agency:** Working for a third party agency is not a basis for refusal, but the agency must be a U.S. company, and all the elements required as evidence of a pre-arranged professional employment must be met. Thus, an agency cannot hire a TN professional with the hopes of finding an appropriate job placement for him or her. To qualify for a TN visa, the TN professional with an employment agency must be coming to fill a specific, identified position.
- (2) **Part Time Employment:** An alien entering the United States in TN status may be employed on a part-time basis.
- (3) **Self-Employment:** An alien cannot qualify for a TN visa to establish a business or practice in the United States in which the professional will be, in substance, self-employed (including by rendering services to a corporation or entity of which the alien is the sole or controlling shareholder or owner). If the alien seeks self-employment, the alien should pursue that employment under another visa category, possibly to include the Treaty Trader (E-1) or Investor (E-2) visa classification.
- (4) **Fellows/Interns:** A TN visa can be issued for fellowships or internships only if the duties reflect a position that is truly at a professional level. If the applicant is seeking to work in a lesser capacity such as trainee or intern, in the sense of being a true novice, and therefore is not in fact working in the position listed in Appendix 1603.D.1, it is correct to refuse

the applicant 214b. However, the application should not be refused solely because the title is "intern" if the duties are in fact at a professional level.

- (5) The TN visa is designed to allow for a citizen of a NAFTA-signatory country to enter the United States for the purpose of engaging in professional employment for a U.S. entity. A U.S. entity is any business entity located and legally operating in the United States, regardless of the nationality of ownership. However, that entity must be a bona fide entity in that it must not serve to disguise the alien's self-employment in the United States. A citizen of Mexico or Canada whose primary purpose of travel is to engage in professional employment for a U.S. entity is permitted to reside temporarily in the United States during the course of that employment provided you are satisfied that the alien's proposed stay is temporary (see [9 FAM 402.17-7](#) below). If a TN visa applicant intends to reside temporarily in the United States, but will work primarily in Mexico or Canada, you must consider whether the applicant's primary purpose of travel to the United States is to engage in professional employment for a U.S. entity, or instead whether that professional employment is merely incidental to the applicant's primary purpose of residing in the United States.
- (6) The same guidance would hold true for employees intending to telework. If there is a legitimate business need for the employee to telework from a location within the United States, this would be allowable in TN status. However, because eligibility for TN status is based on the primary location of the business, a TN visa applicant would not be able to reside in the United States and telework to a location in a foreign country for the convenience of the employee.
- (7) **Changing or Adding Employers or Status:**
  - (a) Aliens in TN status may change or add employers while in the United States by filing Form I-129, Petition for a Nonimmigrant Worker, with the appropriate USCIS service center as designated on the Form I-129 instructions. A new Form I-129 is unnecessary where the TN's jobsite is changed but the employer and the worker's duties remain the same.
  - (b) A Canadian citizen wishing to change or add employers may also depart the United States and apply for readmission with DHS at the port-of-entry (POE).
  - (c) An alien in TN status may work for multiple employers at the same time. A qualified alien in TN status, may depart the United States and, via a new NIV application, request the addition of the new employer(s) to a TN visa. More than one employer can be included on a single TN visa; each employer should be annotated on the visa.
  - (d) Alternatively, the alien in TN status wishing to add employers may also file a Form I-129 directly to the appropriate USCIS service center.

- (8) **Terminating Employment:** There is no requirement that the TN employer or worker notify the Department of the termination of the employment relationship. If the employer chooses to do so, these letters should not form the sole basis of a visa revocation. The TN visa is not employer-specific and, should his or her employment end, the TN worker may begin a position with a different employer, so long as that position constitutes business activities at a professional level as required for TN classification.

## 9 FAM 402.17-5(B) Evidence of Professional Employment

*(CT:VISA-350; 04-20-2017)*

- a. The applicant must present evidence sufficient to satisfy the immigration or consular officer of intent to engage in prearranged business activities for a U.S. employer(s) or entity(ies) at a professional level. This evidence may be in the form of an employment letter from a U.S. or foreign employer, or contract providing a detailed description of the business activities which the individual will be engaged in, and must state the following:
- (1) A detailed listing of the activities in which the alien will be engaged;
  - (2) Purpose of entry;
  - (3) Anticipated length of stay;
  - (4) Educational qualifications or appropriate credentials demonstrating professional status; and
  - (5) Arrangements for remuneration.
- b. Consular officers should verify that the information on all mandatory fields is accurate and the evidence (employment letter or contract) should be scanned into the NIV case record.

## 9 FAM 402.17-5(C) Education and/or Experience Requirement

*(CT:VISA-1060; 04-24-2020)*

- a. **Education:** The applicant's employer must submit evidence that the applicant meets the minimum education requirements or has the alternative credentials set forth in Appendix 1603.D.1 of chapter 16 of NAFTA, which provides specific guidance on the professional qualifications required for entry into each profession.
- (1) For Mexican citizens, either a cedula profesional (a professional credential issued by the Public Education Secretariat [SEP]) or a título (a university diploma) can be presented as evidence of the completion of a degree program for categories which require the equivalent of a bachelor's degree ("licenciatura"). An applicant may present a cedula

professional issued by one of the Mexican state governments, which is also a recognized credential. A carta de pasante does not provide sufficient evidence of the bearer's completion of a bachelor's degree equivalent as it only attests to the bearer's completion of the coursework required for a degree and not the full completion of all degree requirements for the licenciatura.

(2) Note: Where Appendix 1603.D.1 requires a degree, the degree does not necessarily need to be in the specific field as long as there is significant overlap with the subject of the degree and the work to be performed. For example, a TD applicant who is to perform the work of a Biochemist in the U.S. and possesses a degree in chemistry may be as qualified to perform the duties of the position as an applicant with a biochemistry degree

- b. **Experience:** Evidence attesting to the applicant's experience should be in the form of letters from former employers. If the applicant is unable to provide letters from former employers, then post may consider if other satisfactory evidence can establish the applicant's work experience. However, the expectation is that most applicants will be able to provide letters from former employers. If the applicant was self-employed, business records must be submitted attesting to that self-employment.
- c. **Degree:** Where a specific degree is required for TN classification a combination of education and experience may not be used as a substitute for the specific degree.

## 9 FAM 402.17-6 ENTRY DOCUMENTATION

*(CT:VISA-490; 01-26-2018)*

### a. Canadian Citizens:

- (1) Since Canadian citizens, unlike Mexican citizens, are not obliged to be in possession of a nonimmigrant visa (NIV) to enter the United States (except in the E and K categories), the issuance of a TN or TD visa should be rare. You must remember, however, that although Canadians don't need visas, they may, and should, be issued to qualified applicants upon request.
- (2) In rare cases, you may need to issue a TN visa to a Canadian. For example, a Canadian without TN status, who resides in a third country with a non-Canadian spouse or family members, and who plans to enter the United States as a NAFTA professional simultaneously with the family member(s) will need a TN visa in order to confer derivative (TD) status on his or her dependents. In such cases, the Canadian could not wait to have his or her case adjudicated by DHS at a port-of-entry (POE), since the non-Canadian dependent would require a visa to board a flight and to apply for entry into the United States.

- b. **Mexican Citizens:** A Mexican citizen seeking TN status must apply for and be issued a visa. The validity of the visa must coincide with the reciprocity schedule.
- c. **Required Documentation:** Both nationalities will have to submit the following documentation:
- (1) **Proof of citizenship:** The NAFTA visa applicant must present a passport to prove the requisite evidence of citizenship.
  - (2) **Employment Letter:** Evidence of an offer of employment by submission of an employment letter. The employment letter must describe in detail the duties that are to be performed in order to show that the alien will be employed in one of the professional occupations listed in Appendix 1603.D.1 of NAFTA chapter 16 (see [9 FAM 402.17-4\(A\)](#) above), the anticipated length of stay, and arrangements for remuneration.
    - (a) Consular officers should note, however, that unlike H-1B visas, there is no prevailing wage requirement for TN visas. As such, consular officers should verify that the salary proposed is indicative of professional-level employment in the United States.
    - (b) While the job letter may include the NAFTA profession in which the applicant will be employed, the job title (i.e., the applicant's NAFTA profession) must be determined by the interviewing officer based on the duties inherent in the job position description. For example, an employment letter might offer the applicant the job title of "computer system analyst" but the totality of the information available to the consular officer leads to the officer finding that the applicant's job duties more closely align to that of data entry or computer programming—neither of which are specified NAFTA professions. In this example, the consular officer would correctly determine that, despite the job title specified in the employment letter, the applicant does not qualify for the TN visa.
  - (3) **Education or Work Experience:** Evidence that the applicant meets the minimum education and/or work experience requirements set forth in Appendix 1603.D.1 of NAFTA (see [9 FAM 402.17-5\(C\)](#) above). The educational requirements listed should correlate with the job title as determined by you.

## 9 FAM 402.17-7 TEMPORARY ENTRY

*(CT:VISA-350; 04-20-2017)*

The agreement encompasses only business persons coming to the United States temporarily. INA 214(b), therefore, is fully applicable to TN visa applicants. Chapter 16 provides the following definition: "Temporary entry means an entry into the United States without the intent to establish permanent residence." The department's regulation (22 CFR 41.59(c)) amplifies this definition to provide

additional guidance. The essence of the requirement is that the alien is seeking "temporary" entry into the United States. You must be satisfied that the alien's proposed stay is temporary. A temporary period has a reasonable, finite end that does not equate to permanent residence. The circumstances surrounding an application should reasonably and convincingly indicate that the alien's temporary work assignment in the United States will end predictably and that the alien will depart upon completion of the assignment. An intent to immigrate in the future that is in no way connected to the proposed immediate trip need not in itself result in a finding that the immediate trip is not temporary. Repeated renewal of a TN visa that leads to extended stay in the United States, may still be temporary, as long as there is no immediate intent to immigrate.

## **9 FAM 402.17-8 DENIAL OF TN STATUS IN CERTAIN LABOR DISPUTES**

*(CT:VISA-1151; 09-14-2020)*

- a. A citizen of Canada or Mexico may be denied TN status as described in INA 214(e) and annex 1603 of the NAFTA if:
  - (1) The Secretary of Labor certifies to, or otherwise informs the commissioner, that a strike or other labor dispute involving a work stoppage of workers in the alien's occupational classification is in progress at the place where the alien is, or intends to be, employed.
  - (2) Temporary entry of that alien may affect adversely either:
    - (a) The settlement of any labor dispute that is in progress at the place or intended place of employment; or
    - (b) The employment of any person who is involved in such dispute.
- b. If the alien has already commenced employment in the United States, and is participating in a strike or other labor dispute involving a work stoppage of workers, he or she is not considered to be failing to maintain his or her status solely on account of past, present, or future participation in a strike or other labor dispute involving a work stoppage of workers. This holds whether or not such strike or other labor dispute has been certified by the Secretary of Labor, or whether DHS has been otherwise informed that such a strike or labor dispute is in progress. The alien is subject to the following terms and conditions.
- c. If it is determined that an alien shall be denied a TN visa, or is denied entry to the United States, the applicant must be notified in writing of the reason(s) for the refusal. In addition, *L/CA* must be immediately informed of any denial that is due to a labor dispute, so that a designated representative of the applicant's home country government may be promptly notified in writing of the reason for the refusal.

## 9 FAM 402.17-9 MAXIMUM PERIOD OF ADMISSION IN THE UNITED STATES

*(CT:VISA-350; 04-20-2017)*

You must treat a Canadian or Mexican citizen seeking admission as a TN professional as if seeking classification under INA 101(a)(15). Therefore, the INA 214(b) presumption of immigrant intent applies if he fails to meet all the requirements of the TN visa category.

- (1) Visas shall be issued in accordance with the reciprocity schedule. The maximum period of each admission, however, of a TN is three years.
- (2) The admission period of a dependent (TD) must coincide with the TN principal's. (See [9 FAM 402.17-7](#) for definition of "temporary.")
- (3) There is no statutory limitation on stay for those aliens in TN status such as there are for H-1B or L-1 visa holders.

## 9 FAM 402.17-10 SPOUSES AND MINOR CHILDREN – TD VISAS

*(CT:VISA-1151; 09-14-2020)*

- a. Spouses and minor unmarried children, under age 21, who are accompanying or following-to-join TN professionals may be admitted to the United States in the TD classification. TD visa applicants, like TN visa applicants, are subject to INA 214(b). Dependents are not permitted to accept employment in the United States while in TD status unless they are otherwise authorized to do so by DHS. They are, however, permitted to attend school on a full-time basis. As with any derivative status, TD applicants must demonstrate a bona fide spousal or parent-child relationship to a TN status holder.
- b. Because TD visa holders may apply for employment authorization from DHS, posts should account for that fact when assessing a possible ineligibility under INA 212(a)(4) for public charge. If post has concerns related to a family's ability to provide for themselves in the United States, they may, in consultation with *L/CA*, seek a finding of inadmissibility under INA 212(a)(4) (See [9 FAM 302.8-2](#)).
- c. There is no processing fee for classifying dependents of Canadian TNs. If the TN status holder is a Canadian who obtained TN status without the use of a visa, he or she should be able to show a valid Form I-94, Arrival and Departure Record, which demonstrates that DHS authorized his or her TN status. Aliens normally exempt from visa requirements need not obtain visas in order to support the dependent (TD) visa application.
- d. Family members applying for a TD visa who possess either Mexican or Canadian citizenship should be issued multiple entry visas valid for the maximum period authorized by reciprocity schedules or for the length of the

principal alien's visa and/or authorized period of stay, whichever is less. (See reciprocity schedules for fees.)

- e. Non-Canadian or non-Mexican family members of TN status holders are entitled to TD visas: the visas may be issued in non-Canadian or non-Mexican passports. However, only the Canadian and Mexican reciprocity schedules provide data for TN and TD visas. Therefore, number of entries, fees, and validity for non-Canadian or non-Mexican TD visa applicants must be based on the reciprocity schedule of the TN principal alien. For example, a Chinese national married to a Canadian would be issued a TD visa in his or her Chinese passport; based on the Canadian reciprocity schedule, the applicant would be the recipient of a visa valid for multiple entries, with no fee. There are three exceptions to this policy for family members holding Iranian, Iraqi, or Libyan nationality and have been granted refugee or permanent resident status in Canada or Mexico. In these cases, the family member may only be issued a visa for one entry over a period of 3 months. Libyan TD applicants must also pay a visa issuance fee.

## 9 FAM 402.17-11 NAFTA PROFESSIONALS NOT SUBJECT TO INA 212(E)

*(CT:VISA-596; 06-01-2018)*

The two-year home residency requirement for some former J-1 holders applies only to immigrant visa (IV) applicants, and to H and L nonimmigrant visa (NIV) applicants. Thus, TN applicants and their TD family members who are former exchange visitors subject to INA 212(e) are not prohibited from receiving visas and entering the United States as NAFTA professionals, even if their professional activities might be similar or identical to those of an H or L recipient.

## 9 FAM 402.17-12 DEFINING BUSINESS ACTIVITIES AT A PROFESSIONAL LEVEL

*(CT:VISA-596; 06-01-2018)*

- a. In 8 CFR 214.6(c), "business activity at a professional level" is defined as "those undertakings which require that, for successful completion, the individual has at least a baccalaureate degree or appropriate credentials demonstrating status as a professional in a profession set forth in Appendix 1603.D.1." Applying this language is very straightforward when the applicant is a professional who intends to do the basic work of a profession in the United States (e.g., an architect who goes to work as an architect).
- b. **Manager/Supervisor Positions:** Management and/or executive positions can meet the requirements outlined for classification as a NAFTA professional. However, the consular officer must confirm that the management or executive position requires professional-level knowledge in

order to successfully meet the job requirements. For example, an architect whose primary job will be to supervise other architects may be approvable even though the TN worker will not directly be engaging in architectural design, but rather using their professional expertise to assess the work of other architects, which requires at least a B.A. or professional credential in architecture. If the supervisory position is more administrative in nature, e.g. ensuring compliance with company regulations and policies, this would likely not require the professional credentialing in order to be successful. As such, it may not meet the requirements for TN classification.

- c. **Knowledge of English:** There is no statutory requirement of English language ability for TN visa issuance. However, English language ability can be one of several factors to consider when determining if the applicant will be performing professional-level work in the TN category. For example, if an applicant is going to work in an office with English-speaking staff and he or she does not speak English, post must assess whether he or she will be able to perform the duties required of a TN professional. Ultimately, the consular officer must make a factual determination as to whether or not the proposed employment of the visa applicant meets the professional nature definition. If it does not, the application may be refused under INA 214(b).
- d. As stated in [9 FAM 402.17-7](#), TN visa applicants must demonstrate that their stay is temporary in nature. Applicants who cannot successfully demonstrate the temporary nature of their stay and their maintenance of a residence abroad should be appropriately refused under INA 214(b).
- e. There is no statutory limitation on time in TN status such as there is for H-1B or L-1 status.
- f. In cases where the TN applicant also holds a valid B1/B2 visa or Border Crossing Card (BCC), post should not cancel this visa upon issuance of a TN visa. These visas are valid for different travel purposes as a TN visa holder is unable to travel to the United States for the sole purpose of tourism. However, if the TN visa applicant holding a valid B1/B2 visa or BCC is found to no longer overcome the presumption of immigrant intent, the B1/B2 visa or BCC should be revoked under INA 214(b). See [9 FAM 403.11-3\(A\)](#). If the TN visa applicant who holds a valid B1/B2 visa or BCC is found ineligible on the basis that the applicant does not meet the professional qualifications for the visa but does demonstrate that they have a residence abroad that they do not intend to abandon, post should not cancel the B1/B2 visa or BCC.

## 9 FAM 402.17-13 TN VISA ANNOTATIONS

*(CT:VISA-596; 06-01-2018)*

Consular officers should annotate any approved TN visa according to the template below. In cases where a TN worker has more than one employer, the second employer should be listed on line 2 of the annotation (under the first employer).

Employer Name

NAFTA Professional Category

**UNCLASSIFIED (U)**