

OFFICE OF BUSINESS LIAISON

**U.S. DEPARTMENT OF HOMELAND SECURITY
U.S. CITIZENSHIP AND IMMIGRATION SERVICES**

Employer Information Bulletin 11 <p style="text-align: center;">U.S. Employment of Canadian and Mexican Professionals under NAFTA</p> <p style="text-align: center;">March 16, 2005</p>	EISS: (800) 357-2099 NCSC: (800) 375-5283 TDD: (800) 767-1833 Fax: (202) 272-1865 Order Forms: (800) 870-3676 Website: www.uscis.gov
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The following is not intended to be legal advice pertaining to your situation and should not be construed as such. The information provided is intended merely as a general overview with regard to the subject matter covered.

U.S. EMPLOYMENT OF CANADIAN AND MEXICAN PROFESSIONALS UNDER THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA)

General Information about TN Status

Since the effective date of January 1, 1994, (NAFTA) facilitates travel to and employment in the United States (U.S.) of certain Canadian and Mexican workers. NAFTA created TN classification for eligible Canadian and Mexican professional workers and affected terms of Canadians' admissions to the U.S. under other classifications.

A TN position must require services of a NAFTA professional whose profession is noted in Appendix 1603.D.1 (**see attached Appendix 1603.D.1**); the TN employee must possess the credentials required as well as proof of qualifying citizenship. TN status allows unlimited multiple entries to the U.S. for the period of service required by the U.S. employer (includes foreign employers), up to a maximum of one year, extendible indefinitely as long as the temporary purpose of the employment continues.

Note that American Samoa and Swains Island are not part of the "United States" for purposes of the immigration and nationality laws. The Commonwealth of the Northern Mariana Islands is also not part of the "United States" for purposes of the admission of aliens based on employment. Thus, a Canadian or Mexican national may not seek TN admission in order to provide professional services in American Samoa, Swains Island or the Commonwealth of the Northern Mariana Islands. TN admissions are also not allowed in the United States Virgin Islands.

Annual TN Admissions

There is no annual limit on Canadians granted TN status. Mexican TN professionals may not exceed 5,500 admissions per year. However, the annual cap of 5,500 Mexican TN professionals will sunset on December 31, 2003.

Self-Employment in the U.S. Not Permitted

TN: Members of Appendix 1603.D.1 professions who are self-employed outside the U.S. may pursue business relationships from outside the U.S. (e.g. contracts for services) with U.S.-based companies and obtain TN status to engage in these prearranged activities in the U.S. However, under TN classification an alien is not permitted to come to the United States to engage in self-employment in the United States, nor to render services to a corporation or other entity in which he/she is a controlling owner or shareholder.

Other NAFTA Admissions Categories

Nationals Canada and Mexico may also seek admission as B-1 (business visitor), E-1 (treaty trader), E-2 (treaty investor), or L-1 (intra-company transferee) nonimmigrants under NAFTA. This bulletin does not address those alternatives.

TN Processing and Admissions Procedure

Canadians may apply for TN-1 classification directly at a U.S. Class "A" port-of-entry, at a U.S. airport handling international traffic, or at a U.S. pre-flight/pre-clearance station in Canada¹. Documentation must include:

- Proof of Canadian citizenship,
- \$50 filing fee,
- Proof of required Appendix 1603.D credentials; and
- Letter from U.S. employer (or a sending employer in Canada) describing nature and duration of professional employment and salary/wages in the U.S.².

Canadian citizens are visa exempt and do not need consular visas to travel or apply for admission to the U.S. TN-1 applicants at land ports-of-entry must also pay a modest I-94 fee.

TN-2 non-immigrants from Mexico must be approved beneficiaries of I-129 petitions filed by prospective US employers and approved by the **Department of Homeland Security, U.S. Citizenship and Immigration Services'** Nebraska Service Center. Documentation must include:

- Proof of Mexican citizenship,
- Form ETA-9035³ Labor Condition Attestation (LCA) certified by the US Labor Department,
- \$130 filing fee,
- Proof of the purpose for entry, and proof of participation in a permitted NAFTA professional activity.

Mexicans applying for admission to the US under TN-2 classification must obtain visas at US consulates. Note that the above requirements will sunset on December 31, 2003. On and after January 1, 2004, Mexican TNs will file the necessary paperwork with a Department of State Consulate in Mexico in order to receive a TN visa. Visit the Department of State web site for more information on the procedures Mexican citizens must follow in order to obtain a TN visa.

Family Members

Spouses and unmarried children under 21 of Canadian and Mexican professionals obtain TD status. They can be included on the application of the TN principal (**no separate filing fees**) and admitted for the same duration of stay. TD nonimmigrants may study in the US under this classification, but are not authorized for employment. Canadian dependents' eligibility may be adjudicated at a US port-of-entry. Although Mexican family members are automatically included in TN petitions filed at the Nebraska Service Center, they must file separate application for TD visas at US consulates.

Note: Dependents are not required to be Canadian or Mexican citizens.

¹ A Canadian citizen who enters the US more than twice per year in B, E, L or TN status may be eligible for automated border inspections via the INSpass program. Applications are made on Form I-823 at Los Angeles, Miami, Newark, New York JFK, San Francisco, Toronto, Vancouver, and Washington Dulles Airports. The filing fee for Form I-823 is \$25.00, plus a \$50 charge for fingerprinting, if necessary. A USCIS director may waive the filing fee, but not the fingerprinting fee. INSpass cards are valid for one year. Mexican citizens are not eligible for the INSpass program.

² The employer letter should include a job description including professional activities and duties, duration of TN alien's services in the US, requirements for position to be filled (training, license, experience, etc.), alien's credentials, and salary/benefits.

³ Form ETA-9029 is used for NAFTA schedule nurses. For other professions, USDOL's new 3-page ETA 9035 became required by fax (preferred) or mail as of February 5, 2001. This form may be downloaded from www.ows.dolcta.gov. Note that this requirement will sunset on December 31, 2003.

Employers Filing I-129 with I-907 should mail to the below address

**The Department of Homeland Security, U.S. Citizenship and Immigration Services
adjudication of TN petitions.**

**U.S. POSTAL SERVICE: USCIS NEBRASKA SERVICE CENTER
P.O. BOX 87129
LINCOLN, NE 68501-7129**

**COURIER SERVICE: USCIS NEBRASKA SERVICE CENTER
850 "S" STREET
LINCOLN, NE 68508 (Make the following notation on envelope; P.O. 87129)**

Change of Status to TN

Canadian citizens present in the US in B, L, H, or other nonimmigrant status may change to TN status in two ways:

- US employer may elect to file Form I-129 at Nebraska Service Center (includes request for change of status for beneficiary); \$130 fee includes dependents. Form I-539 is used by dependents filing separately.
- As an alternative, the alien may simply depart the US and apply for TN classification directly upon re-entry. See page 1 for applicable fees.

Mexican citizens present in the US in B, L, H or other nonimmigrant status may change to TN-2 status **only** by applying to the Nebraska Service Center (supra) in the same manner as Canadian applicants for change to TN-1 status under #1 above, except that TN-2 principals and TD dependents must include copies of their Forms I-94.

Premium Processing Cases

Employers who desire to expedite a Form I-129 for a TN-1 or TN-2 visa must file Form I-907 "Request for Premium Processing Service" with the appropriate fee of \$1,000 (request Employer Information Bulletin 20).

Change of TN Employment

TN-1 Canadians may change employers or add an employer by filing Form I-129 with the Nebraska Service Center or by departing the US and presenting revised documentation, relating to new employment, at the port of re-entry. **TN-2 Mexicans may change or add employers only** by filing Form I-129 with the Nebraska Service Center.

Extension of TN Stay

Unlimited extensions may be granted to TN nonimmigrant (and dependents) in one-year increments.

Canadians who wish to apply for extensions while remaining in the US may file Form I-129 plus a \$130 filing fee for the TN principal and I-539 plus \$140 filing fee for family members (inclusive) with the Nebraska Service Center. Alternatively, TN principals and family members can depart the US and reapply for admission in TN and TD status. A charge of \$6.00 will apply to each replacement Form I-94 required. TD family members traveling without TN principals extend their stays by applying at ports of re-entry with copies of the principal's Form I-797.

Mexicans apply for extensions of TN-2 status **only** by filing Form I-129 with a \$130 filing fee and copies of the I-797 approval notices, the LCA (which must remain valid), and the Form I-94. Applications on Form I-539 must be filed concurrently by dependent family members with filing fee of \$140. As of January 1, 2004, Mexican TNs will not be required to file the LCA as part of the extension of stay package.

Adjustment of Status from TN

A TN nonimmigrant must maintain *bona fide* nonimmigrant intent throughout the TN nonimmigrant's stay in the United States. This means the TN nonimmigrant must intend to depart the US as required by law at the conclusion of the TN employment. Although a pending labor certification or Form I-140 naming TN alien as beneficiary is not a bar to admission, filing an application for adjustment of status may make it difficult, if not impossible, for the TN nonimmigrant to prove a *bona fide* nonimmigrant intent. Filing for adjustment of status, therefore, may adversely affect the alien's ability to seek a new admission as a TN nonimmigrant.

Understanding The Professions Of Appendix 1603.D.1

Most NAFTA professions are self-explanatory. However, certain historical problem areas merit special attention:

- **Management Consultants:** these professional services are expected to be of a temporary, periodic, or fixed consulting nature rather than performed as full-time employment. The duties may be consist of consulting and/or analysis focusing on ways to improve the "sponsoring" entity's structure, efficiency, profits, etc. **Although a management consultant may be a manager, few managers qualify as management consultants.**
- **Computer Systems Analysts:** this profession should not be confused with computer programming or computer scientists. These professionals use their knowledge and skills to solve computer problems, enable computer technology to meet the individual needs of the "sponsoring" entity, and help that entity achieve maximum benefit from its investment in equipment, personnel, and business processes. **Although, in practice, management consultants frequently require computer systems expertise and computer systems analysts frequently deal with computerized management systems, the descriptions of positions to be filled by either of these NAFTA professionals must substantiate the need for this level of professional skill as well as specify the skill needed.**
- **Engineers:** Engineers may not fill computer-related jobs under TN classification unless they have credentials as computer or software engineers from institutions that recognize computer or software engineering as bona fide engineering specialties offering full engineering credentials, such as professional engineering licenses. Furthermore, the US positions to be filled must require this level of credentials.
- **Scientific Technicians/Technologists:** A business person in the category of "**Scientific Technician/Technologist**" must possess: (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. Since a scientific technician/technologist does not generally have a baccalaureate degree, other principles are used to evaluate the admissibility of scientific technician/technologist applicants.
- **Medical Technologists:** These professionals generally have at least bachelor's degrees in medical technology or life sciences, or a combination of formal training and work experience. They perform complex biological, chemical, hematological, immunological, microscopic and bacteriological tests for the purpose of diagnosing, preventing, or treatment of disease. This profession does not include x-ray, radiological, sonogram, nuclear medical, or dental technicians.