were released upon payment of a fine. The 10 plaintiffs who brought the suit alleged that the INS seized the vehicles without probable cause, failed to inform the plaintiffs about the facts that justified the seizure, and imposed penalties arbitrarily and excessively. Many of the plaintiffs said that they had no idea that the passengers in their cars were ineligible to come to the U.S.

The plaintiffs won a victory in the Ninth Circuit on August 4, 1997 (*Gete v. INS*, 121 F.3d 1285 (9th Cir. 1997)), when the court found that the INS had violated the due process rights of the plaintiffs by failing to adequately explain the reason for the seizures and by failing to provide an adequate chance to respond to the charges. After the case was sent back to the lower court to resolve several remaining matters, the INS reached a settlement with the plaintiffs.

Under the terms of the settlement, the INS has agreed to: (1) revise the form used to notify owners of seized vehicles of their rights and options; (2) adopt mitigation guidance to assist the INS ruling officials in assessing administrative penalties during adjudication of a petition for mitigation of forfeiture; (3) train INS seizing officers concerning the probable cause standard for seizing conveyances; (4) provide copies or a detailed summary of adverse evidence to owners of seized vehicles upon request; (5) render decisions in writing after a personal interview or on a petition for mitigation or remission of forfeiture; and (6) allow class members who petitioned for relief from forfeiture or who had a personal interview that is adequately documented in an existing forfeiture file to submit a petition for reconsideration of the denial of relief from forfeiture.

Persons whose cars were seized by the INS in the Western Region during the 10-year period from June 10, 1989 through September 17, 1999 can file a request for reconsideration of any fine or forfeiture that was imposed, after having an opportunity to review all the adverse evidence. The date for filing a request for reconsideration will be established by the court, but is expected to be within approximately three to four months of November 20, 2000. If the INS determines that the fine was excessive, the difference will be refunded.

Class members should review the settlement prior to the November 20 hearing. Objections must be submitted to the court, and to the attorneys for the INS and the plaintiffs, no later than November 15.

The Notice on the Proposed Settlement, and the Settlement Agreement, are available on the Internet at *http://www.ghp-law.net*. For further information, call attorneys Robert H. Gibbs or Robert Pauw at (206) 682–1080.■

5. INS Issues Guidance on "Trade NAFTA" Applications

The INS Office of Programs recently issued a guidance memorandum addressing applications for admission by professionals under the North American Free Trade Agreement (NAFTA).[82] The memorandum, written by Michael D. Cronin, Acting Executive Associate Commissioner of the INS Office of Programs, clarifies that software engineers are "engineers" within the meaning of NAFTA who may seek entry under the Trade NAFTA (TN) category,[83] and discusses the minimum education requirements and alternative credentials for professional applicants generally.

INA § 241(e) provides that Canadian and Mexican citizens who seek temporary entry into the U.S. to engage in business activities at a professional level may be admitted in accordance with NAFTA if they fall within one of the professions set forth in Appendix 1603.D.1 to Annex 1603 of NAFTA. The list of professional-level occupations provided by Appendix 1603.D.1 includes the occupation of "engineer." At a minimum, applicants must possess a relevant baccalaureate or licentiatura degree or a state/provincial license. NAFTA does not further delineate the type of specialty engineering degree required to claim TN classification, however.

The memorandum states that the three NAFTA partners interpret this silence to mean that "all engineering specialties are included," including software engineers, so long as the requisite degree or licensing requirements are met.

With regard to minimum education requirements and alternative credentials, the memorandum indicates that officers should use "good judgment" in determining whether a degree in an allied field is an appropriate substitute to the degree requirements listed in NAFTA. As an example, the memorandum states that it is reasonable to require software engineers applying under the TN category to provide evidence of a degree in engineering, just as it is reasonable to require civil engineers seeking TN admission to establish that they

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82 North American Free Trade Agreement, U.S.-Can.-Mex., Dec. 17, 1992, 32 I.L.M. 296, 612 (entered into force Jan. 1, 1994).

83 For an in-depth discussion of the TN category as it relates to Canadian applicants, see Vázquez-Azpiri, "Northern Exposure: The Unfulfilled Promise of the Trade NAFTA Category for Canadians," 75 Interpreter Releases 613 (May 4, 1998). See also Etherington and Hawley, "Hiring Professionals Under NAFTA," 97–2 Immigration Briefings (Feb. 1997) (discussing business immigration components of NAFTA).

have an engineering degree. For purposes of NAFTA's entry requirements, baccalaureate or licentiatura degrees issued outside NAFTA countries may be acceptable but post-secondary diplomas or certificates must be issued in Canada, Mexico, or the U.S., the memorandum says.

The memorandum mentions another professional-level occupation that is open to interpretation—the "Scientific Technician/Technologist" category. NAFTA Appendix 1603.D.1 requires that applicants under this category must possess both theoretical knowledge in any of several listed scientific disciplines, and the ability to solve problems in any of the listed disciplines or to apply principles of these disciplines to basic or applied research. A footnote to Appendix 1603.D.1 also requires that applicants must be seeking temporary entry to work in direct support of professionals in one of the listed disciplines. No degree or post-secondary diploma is required for this category, the memorandum notes, but immigration officers must be satisfied that applicants possess the requisite theoretical knowledge. According to the memorandum, additional guidance on this category will be forthcoming

The memorandum, dated July 24, 2000, and obtained by Interpreter Releases last week, is reproduced in Appendix I of this Release. ■

6. Concurrent Requests to Adjust Status and Consular Process are Considered to be a Withdrawal of the I–485

The INS has sent a memorandum instructing Service officers that the concurrent pursuit, by an immigrant visa petition beneficiary, of adjustment of status and consular processing must be treated as a request to withdraw the application for adjustment of status. The August 8, 2000 memo was signed by the INS's Acting Executive Associate Commissioner for Programs, Michael Cronin, and is reproduced in Appendix II.

As background, the memo notes that the INS issued policy guidance in 1999 as to when the filing of a Form I–824, Request for Action on an Approved Application or Petition, was appropriate.[84] That guidance advised that a petitioner should file a Form I–824 when he or she requests a change in the initial manner of processing noted on the visa petition. The memo adds, however, that some applicants for adjustment of status are also using the Form I–824, or in some case are submitting a duplicate visa petition, to request consular processing concurrently with their pending adjustment of status applications.

After studying the issue, the INS has concluded that the concurrent pursuit of both adjustment of status and consular processing would be an inefficient and ineffective use of the Service's resources and also runs the risk of having more than one visa number allocated to the same immigrant.

The new memo instructs that when an alien with a pending I–485 adjustment application files a Form I–824 requesting that the visa petition be forwarded to a consulate, he or she must be notified that the I–824 will be treated as a request to withdraw the I–485. The notice should also provide the alien with a designated response time in which to advise the INS on how he or she wishes to proceed. The INS will then terminate the I–485 by written notice if the alien chooses to pursue consular processing or fails to respond within the time frame granted. The memo adds that such notice will also advise the alien of the termination of any employment authorization granted pursuant to the adjustment application. The Service would then approve the I–824 and would forward the visa petition to the National Visa Center (NVC) for processing.

Similarly, the memo explains, if the INS receives a "duplicate" immigrant visa petition requesting consular processing and the alien has a pending adjustment application, the INS will notify the alien or the attorney of record that the duplicate petition will be treated as a request to withdraw the I–485. The same procedures discussed above would then follow.

The memo codifies this information by adding a new section (§ 23.2(1)) to Chapter 23 of the Adjudicator's Field Manual.

The American Immigration Lawyers Association states that its liaison committees are currently attempting to persuade the INS to reverse this position. ■

7. EEOC Wins English-Only Lawsuit, Record-Breaking Award

The Equal Employment Opportunity Commission (EEOC) has won a lawsuit charging that an English-only policy constituted national origin discrimination. The decision against Premier Operator Services, Inc., formerly a long-distance operator service, represented the largest-ever monetary award ($709,284) obtained by the EEOC in a lawsuit for English-only violations, the agency said in a statement announcing the award. *EEOC v. Premier Operator Services, Inc.*, 113 F. Supp.2d 1066 (N.D. Tex. 2000).

The lawsuit maintained that 13 Latino workers, who were

[84] See 76 Interpreter Releases 1232 (Aug. 26, 1999).

U.S. Department of Justice
Immigration and Naturalization Service

HQINS 70/6.2.23

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

MEMORANDUM FOR ALL REGIONAL DIRECTORS
DIRECTOR OF TRAINING

FROM: Michael D. Cronin
Acting Executive Associate Commissioner
Office of Programs

SUBJECT: Guidance for Processing Applicants under the North American Free Trade Agreement (NAFTA)

This memorandum is being issued to provide additional guidance to Ports-of-Entry (POEs) when processing applicants under the North American Free Trade Agreement (NAFTA).

The Office of Inspections has been asked to provide guidance on whether the occupation Software Engineer is encompassed within the purview of NAFTA. Section 214(e) of the Immigration and Nationality Act states that 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 NAFTA. However, such an applicant must demonstrate business activity at a professional level in one of the professions set forth in Appendix 1603.D.1 to Annex 1603 of the NAFTA. The Immigration and Naturalization Service (INS) uses the coding symbol TN (Trade NAFTA) to refer to a NAFTA professional.

Appendix 1603.D.1 to Annex 1603 of the NAFTA includes the occupation of "Engineer" within the list of professional level occupations. The minimum requirement for entry as a NAFTA engineer is a baccalaureate or licentiature degree or a state/provincial license. There is no further delineation of the types of specialty engineering degrees (e.g., civil, mechanical, electrical, etc.) that qualify for TN classification. Since the appendix doesn't specify certain specialties, the three NAFTA partners interpret this to mean that all engineering specialties are included. Accordingly, an individual engaged in business activities as a "software engineer" at a

Appendix I, continued

professional level that requires a baccalaureate or licentiatura degree or state/provincial license may qualify under the profession of "engineer" under the NAFTA. The question is whether the individual possesses the requisite engineering degree or state/provincial license.

This office has also been asked to provide guidance regarding the minimum education requirements and alternative credentials required for applicants for admission under the NAFTA. In addition to "engineer", Appendix 1603.D.1 lists 60 occupations at the professional level with a corresponding list of educational requirements. If there is an acceptable alternative credential to the educational requirement, it is also listed. The degree should be in the field or in a closely related field. Officers should use good judgement in determining whether a degree in an allied field may be appropriate. Returning to the "software engineer" example, it is reasonable to require the TN applicant to provide evidence of a degree in engineering just as it is reasonable to require an engineering degree for admission as a TN to perform professional level duties as a civil engineer. Please note that "Hotel Manager" is the only occupation that specifically requires a baccalaureate or licentiatura degree in Hotel/Restaurant Management or a Post-Secondary diploma/certificate in Hotel/Restaurant Management plus three years experience in Hotel/Restaurant Management.

The footnotes to Appendix 1603.D.1 are codified at 8 CFR 214.6(c) and provide additional guidance that is useful to the officer in determining whether an applicant for admission qualifies as a TN. Appendix 1603.D.1 is attached for your reference. For purposes of the NAFTA entry requirements, baccalaureate or licentiatura degrees issued by institutions outside of the NAFTA countries may be acceptable whereas post-secondary diplomas or post-secondary certificates must be issued in Canada, Mexico, or the United States.

Another professional-level occupation that is subject to interpretation is the "Scientific Technician/Technologist". Appendix 1603.D.1 specifies that, for temporary entry under NAFTA, the applicant 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. One of the footnotes to the Appendix 1603.D.1 is pertinent, providing that to qualify as a Scientific Technician/Technologist the applicant must be seeking temporary entry to work in direct support of professionals in one of those disciplines. Although no degree or post-secondary diploma is required for entry, the immigration officer must be satisfied that the applicant possesses theoretical knowledge in one of those disciplines. Headquarters continues to work with other Federal agencies and the Canadian and Mexican officials to develop common interpretative guidance and definitions for the terms "possess theoretical knowledge" and "works in direct support". Additional guidance will be provided once an agreement on these interpretive matters is reached.

Please include this memorandum in the NAFTA Handbook, Section 8 entitled NAFTA Cables. If you have further questions regarding this memorandum please contact either Assistant Chief Inspector Jennifer Sava at (202) 307-1942 or Patrice L. Ward at (202) 514-0964.