

has entered the United States but not yet commenced employment, the approval of the petition may be suspended, and an application for admission on the basis of the petition may be denied.

(ii) If there is a strike or other labor dispute involving a work stoppage of workers in progress, but such strike or other labor dispute is not certified under paragraph (1)(18)(i) of this section, or the Service has not otherwise been informed by the Secretary that such a strike or labor dispute is in progress, the Commissioner shall not deny a petition or suspend an approved petition.

(iii) If the alien has already commenced employment in the United States under an approved petition and is participating in a strike or other labor dispute involving a work stoppage of workers, whether or not such strike or other labor dispute has been certified by the Department of Labor, the alien shall not be deemed 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, but is subject to the following terms and conditions.

(A) The alien shall remain subject to all applicable provisions of the Immigration and Nationality Act, and regulations promulgated in the same manner as all other L nonimmigrants;

(B) The status and authorized period of stay of such an alien is not modified or extended in any way by virtue of his or her participation in a strike or other labor dispute involving work stoppage of workers; and

(C) Although participation by an L nonimmigrant alien in a strike or other labor dispute involving a work stoppage of workers will not constitute a ground for deportation, any alien who violates his or her status or who remains in the United States after his or her authorized period of stay has expired will be subject to deportation.

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8. Section 214.6 is revised to read as follows:

§ 214.6 Canadian and Mexican citizens seeking temporary entry to engage in business activities at a professional level.

(a) *General.* Under section 214(e) of the Act, 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 North American Free Trade Agreement (NAFTA).

(b) *Definitions.* As used in this section the terms:

Business activities at a professional level means those undertakings which

require that, for successful completion, the individual has at least a baccalaureate degree or appropriate credentials demonstrating status as a professional.

Business person, as defined in the NAFTA, means a citizen of Canada or Mexico who is engaged in the trade of goods, the provision of services, or the conduct of investment activities.

Engage in business activities at a professional level means the performance of prearranged business activities for a United States entity, including an individual. It does not authorize the establishment of a business or practice in the United States in which the professional will be self-employed.

Temporary entry, as defined in the NAFTA, means entry without the intent to establish permanent residence.

(c) *Appendix 1603.D.1 to Annex 1603 of the NAFTA.* Pursuant to the NAFTA, an applicant seeking admission under this section shall demonstrate business activity at a professional level in one of the professions set forth in Appendix 1603.D.1 to Annex 1603. The professions in Appendix 1603.D.1 and the minimum requirements for qualification for each are as follows: ¹

Appendix 1603.D.1 (Annotated)

- Accountant—Baccalaureate or Licenciatura Degree; or C.P.A., C.A., C.G.A., or C.M.A.
- Architect—Baccalaureate or Licenciatura Degree; or state/provincial license.²
- Computer Systems Analyst—Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma³ or Post Secondary Certificate⁴ and three years' experience.

¹ A business person seeking temporary employment under this Appendix may also perform training functions relating to the profession, including conducting seminars.

² The terms "state/provincial license" and "state/provincial/federal license" mean 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.

³ "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.

⁴ "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.

- Disaster relief insurance claims adjuster (claims adjuster employed by an insurance company located in the territory of a Party, or an independent claims adjuster)—Baccalaureate or Licenciatura Degree and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims; or three years experience in claims adjustment and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims.
- Economist—Baccalaureate or Licenciatura Degree.
- Engineer—Baccalaureate or Licenciatura Degree; or state/provincial license.
- Forester—Baccalaureate or Licenciatura Degree; or state/provincial license.
- Graphic Designer—Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate and three years experience.
- Hotel Manager—Baccalaureate or Licenciatura Degree in hotel/restaurant management; or Post-Secondary Diploma or Post Secondary Certificate in hotel/restaurant management and three years experience in hotel/restaurant management.
- Industrial Designer—Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post Secondary Certificate, and three years experience.
- Interior Designer—Baccalaureate or Licenciatura Degree or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience.
- Land Surveyor—Baccalaureate or Licenciatura Degree or state/provincial/federal license.
- Landscape Architect—Baccalaureate or Licenciatura Degree.
- Lawyer (Including Notary in the province of Quebec)—L.L.B., J.D., L.L.L., B.C.L., or Licenciatura degree (five years); or membership in a state/provincial bar.
- Librarian—M.L.S., or B.L.S. (for which another Baccalaureate or Licenciatura Degree was a prerequisite).
- Management Consultant—Baccalaureate or Licenciatura Degree; or equivalent professional experience as established by statement or professional credential attesting to five years experience as a management consultant, or five years experience in a field of specialty related to the consulting agreement.
- Mathematician (including Statistician)—Baccalaureate or Licenciatura Degree.
- Range Manager/Range Conservationist—Baccalaureate or Licenciatura Degree.
- Research Assistant (working in a post-secondary educational institution)—Baccalaureate or Licenciatura Degree.

- Scientific Technician/Technologist⁵— Possession of (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.
- Social Worker—Baccalaureate or Licenciatura Degree.
- Silviculturist (including Forestry Specialist)—Baccalaureate or Licenciatura Degree.
- Technical Publications Writer—Baccalaureate or Licenciatura Degree, or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience.
- Urban Planner (including Geographer)—Baccalaureate or Licenciatura Degree.
- Vocational Counselor—Baccalaureate or Licenciatura Degree.

Medical/Allied Professionals

- Dentist—D.D.S., D.M.D., Doctor en Odontologia or Doctor en Cirugia Dental or state/provincial license.
- Dietitian—Baccalaureate or Licenciatura Degree; or state/provincial license.
- Medical Laboratory Technologist (Canada)/Medical Technologist (Mexico and the United States)⁶—Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience.
- Nutritionist—Baccalaureate or Licenciatura Degree.
- Occupational Therapist—Baccalaureate or Licenciatura Degree; or state/provincial license.
- Pharmacist—Baccalaureate or Licenciatura Degree; or state/provincial license.
- Physician (teaching or research only)—M.D. Doctor en Medicina; or state/provincial license.
- Physiotherapist/Physical Therapist—Baccalaureate or Licenciatura Degree; or state/provincial license.
- Psychologist—state/provincial license; or Licenciatura Degree.
- Recreational Therapist—Baccalaureate or Licenciatura Degree.
- Registered nurse—state/provincial license or Licenciatura Degree.
- Veterinarian—D.V.M., D.M.V., or Doctor en Veterinaria; or state/provincial license.
- SCIENTIST
 - Agriculturist (including Agronomist)—Baccalaureate or Licenciatura Degree.
 - Animal Breeder—Baccalaureate or Licenciatura Degree.

- Animal Scientist—Baccalaureate or Licenciatura Degree.
- Apiculturist—Baccalaureate or Licenciatura Degree.
- Astronomer—Baccalaureate or Licenciatura Degree.
- Biochemist—Baccalaureate or Licenciatura Degree.
- Biologist—Baccalaureate or Licenciatura Degree.
- Chemist—Baccalaureate or Licenciatura Degree.
- Dairy Scientist—Baccalaureate or Licenciatura Degree.
- Entomologist—Baccalaureate or Licenciatura Degree.
- Epidemiologist—Baccalaureate or Licenciatura Degree.
- Geneticist—Baccalaureate or Licenciatura Degree.
- Geochemist—Baccalaureate or Licenciatura Degree.
- Geologist—Baccalaureate or Licenciatura Degree.
- Geophysicist (including Oceanographer in Mexico and the United States)—Baccalaureate or Licenciatura Degree.
- Horticulturist—Baccalaureate or Licenciatura Degree.
- Meteorologist—Baccalaureate or Licenciatura Degree.
- Pharmacologist—Baccalaureate or Licenciatura Degree.
- Physicist (including Oceanographer in Canada)—Baccalaureate or Licenciatura Degree.
- Plant Breeder—Baccalaureate or Licenciatura Degree.
- Poultry Scientist—Baccalaureate or Licenciatura Degree.
- Soil Scientist—Baccalaureate or Licenciatura Degree.
- Zoologist—Baccalaureate or Licenciatura Degree.
- TEACHER
 - College—Baccalaureate or Licenciatura Degree.
 - Seminary—Baccalaureate or Licenciatura Degree.
 - University—Baccalaureate or Licenciatura Degree.

(d) Classification of citizens of Mexico as TN professionals under the NAFTA—

(1) *General.* A United States employer seeking to classify a citizen of Mexico as a TN professional temporary employee shall file a petition on Form I-129, Petition for Nonimmigrant Worker, with the Northern Service Center, even in emergent circumstances. The petitioner may submit a legible photocopy of a document in support of the visa petition in lieu of the original document. The original document shall be submitted if requested by the Service.

(2) *Supporting documents.* A petition in behalf of a citizen of Mexico seeking classification as a TN professional shall be accompanied by:

- (i) A certification from the Secretary of Labor that the petitioner has filed the appropriate documentation with the Secretary in accordance with section (D)(5)(b) of Annex 1603 of the NAFTA.

(ii) Evidence that the beneficiary meets the minimum education requirements or alternative credentials requirements of Appendix 1603.D.1 of Annex 1603 of the NAFTA as set forth in § 214.6(c). This documentation may consist of licenses, degrees, diplomas, certificates, or evidence of membership in professional organizations. Degrees, diplomas, or certificates received by the beneficiary from an educational institution not located within Mexico, Canada, or the United States must be accompanied by an evaluation by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials. Evidence of experience should consist of letters from former employers or, if formerly self-employed, business records attesting to such self-employment; and

(iii) A statement from the prospective employer in the United States specifically stating the Appendix 1603.D.1 profession in which the beneficiary will be engaging and a full description of the nature of the duties which the beneficiary will be performing. The statement must set forth licensure requirements for the state or locality of intended employment or, if no license is required, the non-existence of such requirements for the professional activity to be engaged in.

(iv) *Licensure for TN classification—*
(A) *General.* If the profession requires a state or local license for an individual to fully perform the duties of that profession, the beneficiary for whom TN classification is sought must have that license prior to approval of the petition and evidence of such licensing must accompany the petition.

(B) *Temporary licensure.* If a temporary license is available and the beneficiary would be allowed to perform the duties of the profession without a permanent license, the director shall examine the nature of the duties, the level at which the duties are performed, the degree of supervision received, and any limitations which would be placed upon the beneficiary. If an analysis of the facts demonstrates that the beneficiary, although under supervision, would be fully authorized to perform the duties of the profession, TN classification may be granted.

(C) *Duties without licensure.* In certain professions which generally require licensure, a state may allow an individual to fully practice a profession under the supervision of licensed senior or supervisory personnel in that profession. In such cases, the director shall examine the nature of the duties and the level at which they are to be performed. If the facts demonstrate that the beneficiary, although under

⁵ A business person in this category 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.

⁶ A business person in this category 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.

supervision, would fully perform the duties of the profession, TN classification may be granted.

(D) *Registered nurses.* The prospective employer must submit evidence that the beneficiary has been granted a permanent state license, a temporary state license or other temporary authorization issued by a State Board of Nursing authorizing the beneficiary to work as a registered or graduate nurse in the state of intended employment in the United States.

(3) *Approval and validity of petition—*
(i) *Approval.* The director shall notify the petitioner of the approval of the petition on Form I-797, Notice of Action. The approval notice shall include the beneficiary's name, classification, Appendix 1603.D.1 profession, and the petition's period of validity.

(ii) *Recording the validity of petitions.* Procedures for recording the validity period of petitions are:

(A) If the petition is approved before the date the petitioner indicates that employment will begin, the approved petition and approval notice shall show the actual dates requested by the petitioner as the validity period, not to exceed the limits specified by paragraph (d)(3)(iii) of this section.

(B) If the petition is approved after the date the petitioner indicates employment will begin, the approved petition and approval notice shall show a validity period commencing with the date of approval and ending with the date requested by the petitioner, as long as that date does not exceed the limits specified by paragraph (d)(3)(iii) of this section.

(C) If the period of employment requested by the petitioner exceeds the limit specified in paragraph (d)(3)(iii) of this section, the petition shall be approved only up to the limit specified in that paragraph.

(iii) *Validity.* An approved petition classifying a citizen of Mexico as a TN nonimmigrant shall be valid for a period of up to one year.

(4) *Denial of petition—*(i) *Notice of intent to deny.* When an adverse decision is proposed on the basis of derogatory information of which the petitioner is unaware, the director shall notify the petitioner of the intent to deny the petition and the basis for the denial. The petitioner may inspect and rebut the evidence and will be granted a period of thirty days in which to do so. All relevant rebuttal material will be considered in making a final decision.

(ii) *Notice of denial.* The petitioner shall be notified of the decision, the reasons for the denial, and the right to

appeal the denial under part 103 of this chapter.

(5) *Revocation of approval of petition—*(i) *General.* (A) The petitioner shall immediately notify the Service of any changes in the terms and conditions of employment of a beneficiary which may effect eligibility under section 214(e) of the Act or § 214.6. An amended petition should be filed when the petitioner continues to employ the beneficiary. If the petitioner no longer employs the beneficiary, the petitioner shall send a letter explaining the change(s) to the director who approved the petition.

(B) The director may revoke a petition at any time, even after the validity of the petition has expired.

(ii) *Automatic revocation.* The approval of an unexpired petition is automatically revoked if the petitioner goes out of business, files a written withdrawal of the petition, or notifies the Service that the beneficiary is no longer employed by the petitioner.

(iii) *Revocation on notice—*(A) *Grounds for revocation.* The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:

(1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;

(2) The statement of facts contained in the petition were not true and correct;

(3) The petitioner violated the terms or conditions of the approved petition;

(4) The petitioner violated requirements of section 214(e) of the Act or § 214.6; or

(5) The approval of the petition violated § 214.6 or involved gross error.

(B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within thirty days of the date of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition.

(6) *Appeal of a denial or revocation of a petition—*(i) *Denial.* A denied petition may be appealed under part 103 of this chapter.

(ii) *Revocation.* A petition that has been revoked on notice may be appealed under part 103 of this chapter. Automatic revocations may not be appealed.

(7) *Numerical limit—*(i) *Limit on number of petitions to be approved in behalf of citizens of Mexico.* Beginning on the date of entry into force of the NAFTA, not more than 5,500 citizens of Mexico can be classified as TN nonimmigrants annually.

(ii) *Procedures.* (A) Each citizen of Mexico issued a visa or otherwise provided TN nonimmigrant status under section 214(e) of the Act shall be counted for purposes of the numerical limit. Requests for petition extension or extension of the alien's stay and submissions of amended petitions shall not be counted for purposes of the numerical limit. The spouse and children of principal aliens classified as TD nonimmigrants shall not be counted against the numerical limit.

(B) Numbers will be assigned temporarily to each Mexican citizen in whose behalf a petition for TN classification has been filed. If a petition is denied, the number originally assigned to the petition shall be returned to the system which maintains and assigns numbers.

(C) When an approved petition is not used because the beneficiary does not apply for admission to the United States, the petitioner shall notify the service center director who approved the petition that the number has not been used. The petition shall be revoked pursuant to paragraph (d)(5)(ii) of this section and the unused number shall be returned to the system which maintains and assigns numbers.

(D) If the total annual limit has been reached prior to the end of the year, new petitions and the accompanying fee shall be rejected and returned with a notice stating that numbers are unavailable for Mexican citizen TN nonimmigrants and the date when numbers will again become available.

(e) *Classification of citizens of Canada as TN professionals under the NAFTA—*
(1) *General.* Under section 214(e) of the Act, a citizen of Canada 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.

(2) *Application for admission.* A citizen of Canada seeking admission under this section shall make application for admission with an immigration officer at a United States Class A port of entry, at a United States airport handling international traffic, or at a United States pre-clearance/pre-flight station. No prior petition, labor certification, or prior approval shall be required.

(3) *Evidence.* A visa shall not be required of a Canadian citizen seeking admission as a TN nonimmigrant under section 214(e) of the Act. Upon application for admission at a United States port of entry, an applicant under this section shall present the following:

(i) *Proof of Canadian citizenship.* Unless travelling from outside the