

Appendix III

**DEASY &
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ATTORNEYS AT LAWRobert P. Deasy
Robert S. Whitehill

November 28, 1994

Ms. Jacqueline A. Bednarz
Chief, Non-Immigrant Branch Adjudication
Immigration & Naturalization Service
425 Eye Street, NW
Washington, DC 20536

Dear Ms. Bednarz:

Far be it from me to pass up an opportunity to joust with windmills.

I read with interest an exchange of correspondence published in the November 18, 1994 edition of Interpreter Releases. Copies of a letter to you from Ms. Amy C. Daly and of your response are attached.

I am confused by your response, as I have had similar experiences with inspectors at the Peace Bridge denying TN classification to Canadian citizen graduates of U.S. medical schools. However, once the provisions of OI 214.6c(c)(2) are pointed out, TN classification is usually granted. A copy of the OI is enclosed. In particular, I rely on the passage from the OI which reads as follows:

"Canadian-citizen physicians, however, who are graduates of U.S. medical schools may be admitted under this classification for residencies, internships, or direct patient care."

I am not sure that your response to Ms. Daly directly addresses this provision of the Operations Instructions. Please advise whether this provision of the Operations Instructions remains valid.

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Chief, Non-Immigrant Branch Adjudication
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Your kind attention to this matter is appreciated.

Please accept my best wishes for the upcoming holidays.

Sincerely,

ROBERT P. DEASY
Attorney at Law



U.S. Department of Justice
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Washington, DC 20536

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13 MAR 1995

Dear Mr. Deasy:

This is in response to your letter of November 28, 1994, concerning the entry of Canadian physicians in the TN classification under the North American Free Trade Agreement (NAFTA). I apologize for the delay and hope you were not inconvenienced as a result.

Annex 1603, Section D of the NAFTA provides for the entry of a Party citizen seeking to render professional-level services for an entity in another Party country. Interim regulations at 8 CFR 214.6(c) set in regulation Appendix 1603.D.1 to Annex 1603 of the NAFTA, which is a listing of occupations agreed upon by the three signatory countries. (Appendix 1603.D.1 replaces Schedule 2 to Annex 1502.1 of the United States-Canada Free-Trade Agreement (CFTA) at 8 CFR 214.6(d)(2)(ii)). The professions in Appendix 1603.D.1 and the minimum requirements for qualification for each include that of "physician (teaching or research only)," the minimum requirement for which is an M.D., Doctor en Medicina, or state/provincial license.

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Neither the Appendix 1603.D.1 nor the regulation differentiate between a medical degree obtained abroad or a medical degree obtained in the United States. A TN physician, therefore, is limited by the NAFTA and the regulation to teaching and/or research only. There is no provision for a TN physician to engage primarily in clinical, or direct, patient care.

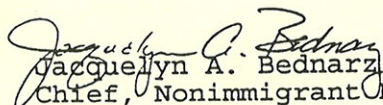
In your letter, you reference Service Operations Instructions at OI 214.6(c)(2), which relate to the CFTA, the predecessor agreement to the NAFTA. Under that instruction, Canadian physicians who were graduates of United States medical schools could be admitted as TC nonimmigrants to participate in residencies, internships, or direct patient care. Since the CFTA was suspended with the entry into force of the NAFTA, and this OI relates to entry under the CFTA, this provision in the OIs does not comport with the NAFTA and is, therefore, no longer in effect. The Service will develop and disseminate OIs controlling NAFTA after promulgation of a final rule.

The Parties to the NAFTA have agreed, for purposes of implementation or as a practical matter, that patient care incidental to the teaching and/or research is permissible.

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.

I hope that this response clarifies the Service position with respect to the temporary entry of Canadian and Mexican physicians under the provisions of the NAFTA.

Sincerely,


Jacquelyn A. Bednarz
Chief, Nonimmigrant Branch
Adjudications