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Immigration and Naturalization Service

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Office of the Executive Associate Commissioner

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MEMORANDUM FOR REGIONAL DIRECTORS
EXECUTIVE ASSOCIATE COMMISSIONER
IMMIGRATION SERVICES DIVISION
ACTING DIRECTOR, INTERNATIONAL AFFAIRS
OFFICER DEVELOPMENT TRAINING FACILITY, GLYNCO
OFFICER DEVELOPMENT TRAINING FACILITY, ARTESIA

FROM: *JW* Johnny N. Williams
Executive Associate Commissioner
Office of Field Operations

SUBJECT: Field Guidance on the Admission of Scientific Technicians/Technologists under the North American Free Trade Agreement (IN 03-01)

This memorandum is being issued as a revision of Chapter 15.5 of the Inspector's Field Manual (IFM) to provide additional guidance to immigration officers who are evaluating the qualifications of applicants for admission as TN Scientific Technicians/Technologists under the provisions of the North American Free Trade Agreement (NAFTA).

Pursuant to regulation at 8 CFR 214.6 (e)(2), the applicant must present documentation sufficient to satisfy the immigration officer at the time of application for admission that the applicant is seeking entry to engage in business activities at a professional level and that the applicant meets the criteria to perform at such a professional level. The Scientific Technician/Technologist category has been problematic for all of the parties to NAFTA. At the NAFTA Temporary Entry Working Group annual meeting, the United States delegation proposed clarification of admission standards for Scientific Technician/Technologists. In December 2001, the parties drafted and subsequently agreed to guidelines for evaluating applicants for Scientific Technician/Technologist positions.

These revisions to the IFM will be incorporated into future releases of the Immigration and Naturalization Service Easy Research and Transmittal System (INSERTS). Should you have any questions regarding this memorandum, please contact

Accordingly Chapter 15.5 section (f) (2) (A) of the IFM is revised to read as follows:

- (A) 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. A scientific technician/technologist does not generally have a baccalaureate degree. The following principles will be used to evaluate the admissibility of scientific technician/technologist applicants.
- (1) Individuals for whom scientific technicians/ technologists wish to provide direct support must qualify as a professional in their own right in one of the following fields: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology, or physics.
 - (2) A general offer of employment by such a professional is not sufficient, by itself, to qualify for admission as a Scientific Technician or Technologist (ST/T). The offer must demonstrate that the work of the ST/T will be *inter-related with* that of the supervisory professional. That is, the work of the ST/T must be managed, coordinated and reviewed by the professional supervisor, and must also provide input to the supervisory professional's own work.
 - (3) The ST/T's theoretical knowledge should have been acquired through the *successful completion of at least two years of training* in a *relevant* educational program. Such training may be documented by presentation of a diploma, a certificate, or a transcript accompanied by evidence of relevant work experience.
 - (4) U.S. authorities will rely on the Department of Labor's Occupational Outlook Handbook to establish whether proposed job functions are consistent with those of a scientific or engineering technician or technologist. ST/Ts should not be admitted to perform job functions that are primarily associated with other job titles.
 - (5) Not admissible as ST/Ts are persons intending to do work that is normally done by the construction trades (welders, boiler makers, carpenters, electricians, etc.), even where these trades are specialized to a particular industry (e.g., aircraft, power distribution, etc.)

- whether the applicant has established the receiving enterprise;
- whether, as a matter of fact, the applicant has sole or primary control of the U.S. enterprise (regardless of the applicant's actual percentage of share ownership);
- whether the applicant is the sole or primary owner of the business; or
- whether the applicant is the sole or primary recipient of income of the business.

(F) Establishment of a Business in Which the Professional Will be Self-Employed in the United States. The following factors, among others are relevant in determining whether the business person will be self-employed in the United States:

- incorporation of a company in which the business person will be self-employed;
- initiation of communications (e.g., by direct mail or by advertising) for the purpose of obtaining employment or entering into contracts for an enterprise in the United States; or
- responding to advertisements for the purpose of obtaining employment or entering into contracts.

On the other hand, the following activities do not constitute the establishment of a business in which the business person will be self-employed in the United States:

- responding to unsolicited inquiries about service(s) which the professional may be able to perform; or
- establishing business premises from which to deliver pre-arranged service to clients.

(Paragraph (f)(1) revised IN98-06)

(2) Appendix 1603.D.1 to Annex 1603 of the NAFTA. Under NAFTA, an applicant seeking classification as a TN must demonstrate business activity at a professional level in one of the professions or occupations listed in Appendix 1603.D.1 to Annex 1603. Appendix 1603.D.1 (which replaces Schedule 2 to Annex 1502.1 of the CFTA) is set forth at 8 CFR 214.6(c). A Baccalaureate (bachelor's) or Licenciatura degree is the minimum requirement for these professions unless an alternative credential is otherwise specified. 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.

A footnote to Appendix 1603.D.1 allows for temporary entry to perform training functions relating to any of the cited occupations or profession, including conducting seminars. However, these training functions must be conducted in the manner of prearranged activities performed for a U.S. entity and the subject matter to be proffered must be at a professional level. The training function does not allow for the entry of a business person to conduct seminars which do not constitute the performance of prearranged activities for a U.S. entity.

The terms "state/provincial license" and "state/provincial/federal license" means 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.

A "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. A "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.

The following notes relate to NAFTA TN admissions in specific occupations:

(A) 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. A scientific technician/technologist does not generally have a baccalaureate degree. The following principles will be used to evaluate the admissibility of scientific technician/technologist applicants.

(i) Individuals for whom scientific technicians/technologists wish to provide direct support must qualify as a professional in their own right in one of the following fields: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology, or physics.

(ii) A general offer of employment by such a professional is not sufficient, by itself, to qualify for admission as a Scientific Technician or Technologist (ST/T). The offer must demonstrate that the work of the ST/T will be inter-related with that of the supervisory professional. That is, the work of the ST/T must be managed, coordinated and reviewed by the professional supervisor, and must also provide input to the supervisory professional's own work.

(iii) The ST/T's theoretical knowledge should generally have been acquired through the successful completion of at least two years of training in a relevant educational program. Such training may be documented by presentation of a diploma, a certificate, or a transcript accompanied by evidence of relevant work experience.

(iv) U.S. authorities will rely on the Department of Labor's Occupational Outlook Handbook to establish whether proposed job functions are consistent with those of a scientific or engineering technician or technologist. ST/Ts should not be admitted to perform job functions that are primarily associated with other job titles.

(v) Not admissible as ST/Ts are persons intending to do work that is normally done by the construction trades (welders, boiler makers, carpenters, electricians, etc.), even where these trades are specialized to a particular industry (e.g., aircraft, power distribution, etc.)

(B) A business person in the category of "**Medical Laboratory Technologist** (Canada)/**Medical Technologist** (Mexico and the United States)" 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.

(C) Foreign medical school graduates seeking temporary entry in the category of "**Physician (teaching or research only)**" may not engage in direct patient care. Patient care that is incidental teaching and/or research is permissible. Patient care is incidental when it is casually incurred in conjunction with the physician's teaching or research. To determine if the patient care will be incidental, factors such as the amount of time spent in patient care relative to teaching and/or research, whether the physician receives compensation for such services, whether the salary offer is so substantial in teaching and/or research that direct patient care is unlikely, or whether the physician will have a regular patient load, should be considered by the officer.

(D) **Registered Nurses**. Registered nurses must demonstrate eligibility by providing a provincial or state license or Licenciatura degree. However, in order to be admitted, the registered nurse must present a permanent state license, a temporary state license, or other temporary authorization to work as a registered nurse, issued by the state nursing board in the state of intended employment. Admission of nurses should not be limited to the expiration date of either document. In addition, registered nurses must present a certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS) or an equivalent credentialing organization. [See 8 CFR 212.15 and AFM Ch. 30.12.] The Secretary of Homeland Security will continue to exercise his discretion to waive the certificate requirement up to and including July 25, 2005, for Canadian and Mexican health nurses, who, before September 23, 2003, were employed as "trade NAFTA" (TN) or "trade Canada" (TC) nonimmigrant health care workers and held valid licenses from a United States jurisdiction. Until that