

# Part P - USMCA Professionals (TN)

## Chapter 1 - Purpose and Background

### A. Purpose

The North American Free Trade Agreement (NAFTA) created certain economic and trade relationships between Canada, Mexico, and the United States. NAFTA permits a Canadian or Mexican citizen to seek admission into the United States for a temporary period to engage in business activities at a professional level, including a professional in the TN nonimmigrant visa classification.<sup>[1]</sup>

To qualify for this nonimmigrant status, the alien must be a citizen of Canada or Mexico seeking admission for a temporary period of time to engage in business activities at a professional level.<sup>[2]</sup>

On July 1, 2020, the United States-Mexico-Canada Agreement (USMCA) (PDF) entered into force and replaced NAFTA.<sup>[3]</sup> However, the USMCA retained all substantive immigration-related elements of the former NAFTA and the United States continues to use the TN designation for these professionals. The USMCA list of professionals that govern TN admissions is identical to the NAFTA list.<sup>[4]</sup>

For the purposes of discussing TN classification, this part uses the terms “NAFTA” and “USMCA” interchangeably.

### B. Background

On December 17, 1992, the United States, Mexico, and Canada signed the NAFTA. Congress implemented this agreement in the North American Free Trade Implementation Act.<sup>[5]</sup> The agreement entered into force on January 1, 1994. As previously mentioned, NAFTA allows Canadian or Mexican citizens who qualify to enter the United States temporarily for certain types of employment.<sup>[6]</sup> The associated “TN professional” category from the agreement is a business person<sup>[7]</sup> seeking entry to engage in a business activity at a professional level<sup>[8]</sup> in a profession listed in NAFTA Appendix 1603.D.1.<sup>[9]</sup>

The “TN professional” was modeled on the professional category in the United States-Canada Free-Trade Agreement (CFTA), which was in effect from January 1, 1989, until NAFTA’s entry into force on January 1, 1994.<sup>[10]</sup> An alien admitted as a TN professional is not necessarily otherwise eligible for other temporary worker classifications, such as H-1B, or as an employment-based immigrant.<sup>[11]</sup>

On July 1, 2020, the United States-Mexico-Canada Agreement (USMCA) (PDF) replaced NAFTA, but did not make any substantive changes to the provisions in NAFTA that affect immigration matters.<sup>[12]</sup> As provided above, even though the USMCA replaced NAFTA, the USMCA retained all substantive

elements of the former NAFTA and the United States continues to use the TN designation for these professionals.<sup>[13]</sup>

## **C. Roles in U.S. Government**

### **1. U.S. Customs and Border Protection**

NAFTA/USMCA provides that qualifying TN professionals may be granted entry into participating countries upon application for admission at the border. In effect, this agreement grants U.S. Customs and Border Protection (CBP) primary authority to adjudicate TN applications for admission to the United States.<sup>[14]</sup>

NAFTA/USMCA Chapter 16, Annex 1603, Section (D)(2)(a) specifies that no party to the agreement may require prior approval procedures, petitions, labor certification tests, or other similar procedures as a condition of such entry. This means that Canadian TN professionals may apply for admission directly at:

- A U.S. Class A port-of-entry;
- An airport handling international flights; or
- A pre-clearance or pre-flight station in Canada.

Canadian TN professionals may apply for admission to the United States without first filing a Petition for a Nonimmigrant Worker (Form I-129) with USCIS or obtaining a nonimmigrant visa from the U.S. Department of State (DOS). Unlike Canadian TN professionals, Mexican TN professionals may not apply for admission directly with CBP. Mexican TN professionals must first obtain a TN nonimmigrant visa from the U.S. Department of State (DOS).

When applying to CBP for admission, the TN professional must:

- Meet all eligibility requirements as a TN professional;
- Satisfy the inspecting CBP officer that the proposed stay is temporary,<sup>[15]</sup> and
- Comply with existing immigration measures applicable to admission into the United States as a nonimmigrant, including proof of citizenship in a NAFTA/USMCA signatory country.<sup>[16]</sup>

### **2. USCIS**

A qualified Canadian or Mexican professional present in the United States may apply for an extension of his or her TN status if he or she is currently in a valid TN status. In addition, such professionals who are under a different valid nonimmigrant status may apply for a change of status to TN. In all cases, such professionals must file a Petition for a Nonimmigrant Worker (Form I-129) with USCIS to do so.

<sup>[17]</sup>

USCIS also accepts and adjudicates Form I-129 petitions filed by Canadian TN professionals residing outside the United States. If approved, the Canadian professional may present the approval notice to a CBP officer at the port of entry (as opposed to having to file an application for admission with CBP to enter under the TN classification as described above).

## **D. Legal Authorities**

- NAFTA/USMCA Chapter 16 – Temporary entry for business persons
- The United States-Mexico-Canada Agreement (USMCA) (PDF) – Protocol replacing the North American Free Trade Agreement with the Agreement between Canada, the United States of America, and the United Mexican States
- Pub. L. 103-182 (PDF) (December 8, 1993) – North American Free Trade Implementation Act
- Pub. L. 116-113 (PDF) (January 29, 2020) – United States-Mexico-Canada Agreement Implementation Act
- INA 214(e) – Nonimmigrant professionals and annual numerical limit
- 8 CFR 214.6 – Citizens of Canada or Mexico seeking temporary entry under NAFTA/USMCA to engage in business activities at a professional level

## **Footnotes**

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[^ 1] See NAFTA Annex 1603, Section D (limited to the entry of a citizen of a party country seeking to render professional-level services for an entity in another party country). The TN classification is not found in the general temporary immigration provisions at section 101(a)(15) of the Immigration and Nationality Act (INA), but is included at INA 214(e).

[^ 2] For specific professions that may be eligible for the TN nonimmigrant classification, see NAFTA Chapter 16, Appendix 1603.D.1 to Annex 1603, Professionals (NAFTA Appendix 1603.D.1).

[^ 3] See United States-Mexico-Canada Agreement Implementation Act, Pub. L. 116-113 (PDF) (January 29 2020).

[^ 4] See NAFTA Chapter 16, Annex 1603, Section D, Professionals. See USMCA, Chapter 16, Appendix 2 (PDF) (found at page 1322 of the USMCA).

[^ 5] See Pub. L. 103-182 (PDF) (December 8, 1993).

[^ 6] See NAFTA Annex 1603, Section D (limited to the entry of a citizen of a party country seeking to render professional-level services for an entity in another party country).

[^ 7] See 8 CFR 214.6(b) (defining business person as a citizen of Canada or Mexico who is engaged in the trade of goods, the provision of services, or the conduct of investment activities).

[^ 8] See 8 CFR 214.6 (NAFTA TN classification) and 8 CFR 214.6(b) (definition of business activities at a professional level).

[^ 9] See 8 CFR 214.6(c) for the requirements for each eligible profession within the TN classification.

[^ 10] Congress implemented CFTA in 1988. See United States-Canada Free-Trade Agreement Implementation Act of 1988, Pub. L. 100-449 (PDF) (September 28, 1988).

[^ 11] See INA 101(a)(15)(H)(i)(b). See INA 203(b)(3).

[^ 12] See United States-Mexico-Canada Agreement Implementation Act, Pub. L. 116-113 (PDF) (January 29 2020).

[^ 13] The USMCA list of professionals that govern TN admissions is identical to the NAFTA list. See NAFTA Chapter 16, Annex 1603, Section D, Professionals. See USMCA, Chapter 16, Appendix 2 (PDF) (found at page 1322 of the USMCA).

[^ 14] See NAFTA Chapter 16, Annex 1603, Section D, Professionals.

[^ 15] See 8 CFR 214.6(b).

[^ 16] See 8 CFR 235 (inspection of persons applying for admission). See 8 CFR 214.6(d).

[^ 17] See Chapter 4, Extension of Stay and Change of Status [2 USCIS-PM P.4]. See Part A, Nonimmigrant Policies and Procedures, Chapter 4, Extension of Stay, Change of Status, and Extension of Petition Validity [2 USCIS-PM A.4].

## Chapter 2 - Eligibility Requirements

An alien may be eligible to work in the United States as a North American Free Trade Agreement (NAFTA/USMCA) professional in the TN nonimmigrant classification,<sup>[1]</sup> if he or she meets the following conditions:<sup>[2]</sup>

- The alien is a citizen of Canada or Mexico;
- The alien's profession is included in NAFTA/USMCA;<sup>[3]</sup>
- The position in which the alien will be working in the United States requires a NAFTA/USMCA professional;
- The alien has the qualifications of the profession (that is, he or she meets the specific requirements, education, and experience, as applicable); and
- The alien will work in a prearranged full-time or part-time job for a U.S. employer or entity.<sup>[4]</sup> Self-employment does not qualify under NAFTA/USMCA.

## A. Definitions

The table below provides terms and definitions that relate to eligibility as a TN professional.<sup>[5]</sup>

Definition of Terms Common to TN Nonimmigrant Classification

Term	Definition
Business activities at a professional level	<ul style="list-style-type: none"><li>Those undertakings which require, for successful completion, that the person have at least a baccalaureate degree or appropriate credentials demonstrating status as a professional in a profession set forth in NAFTA/USMCA Appendix 1603.D.1.</li></ul>
Businessperson	<ul style="list-style-type: none"><li>As defined in the NAFTA/USMCA, a citizen of Canada or Mexico who is engaged in the trade of goods, the provision of services, or the conduct of investment activities.</li></ul>
Engage in business activities at a professional level	<ul style="list-style-type: none"><li>The performance of prearranged business activities for a U.S. entity, including an individual person.</li><li>It does not authorize the establishment of a business or practice in the United States in which the professional will be, in substance, self-employed. A professional is deemed to be self-employed if he or she will be rendering services to a corporation or entity of which the professional is the sole or controlling shareholder or owner.</li></ul>
Temporary entry	<ul style="list-style-type: none"><li>As defined in the NAFTA/USMCA, entry without the intent to establish permanent residence.</li><li>The alien must satisfy the inspecting immigration officer that the proposed stay is temporary.</li><li>A temporary period has a reasonable, finite end that does not equate to permanent residence. To establish that the alien's entry will be temporary, the alien must demonstrate to the satisfaction of the inspecting immigration officer that the work assignment in the United States ends at a predictable time and that he or she will depart upon completion of the assignment.</li></ul>

Term	Definition
Citizen, with respect to Mexico	<ul style="list-style-type: none"> <li>As defined in NAFTA/USMCA Annex 1608, a national or a citizen according to the existing provisions of Articles 30 and 34, respectively, of the Mexican Constitution.</li> </ul>

## B. Self-Employment

### 1. General Considerations

Canadian or Mexican citizens seeking to engage in self-employment in trade or investment activities in the United States are not eligible for the TN nonimmigrant classification and instead must seek classification as a Treaty Trader or Treaty Investor (E nonimmigrant).<sup>[6]</sup>

NAFTA Chapter 16, Annex 1603, Section B, Traders and Investors, establishes the appropriate category of temporary entry for a Canadian or Mexican citizen seeking to develop and direct investment operations in another party country. Self-employment conflicts with the intent of the NAFTA Implementation Act and its accompanying Statement of Administrative Action (SAA), which states: “Section D of Annex 1603 does not authorize a professional to establish a business or practice in the U.S. in which the professional will be self-employed.”<sup>[7]</sup>

Although the regulations governing the previous United States-Canada Free-Trade Agreement (CFTA) Implementation Act did not address self-employment, the bar on establishing a business or practice in which the professional will be self-employed is consistent with the intent of the United States and Canada in entering into the CFTA. Since entry into NAFTA was not intended to substantively change the treatment of professionals, this explicit bar only clarifies existing law.<sup>[8]</sup>

A Canadian or Mexican citizen who is self-employed outside the United States may seek admission to the United States in accordance with a prearranged agreement with an enterprise owned by another person or entity located in the United States. A TN applicant may not do so to render prearranged services for a U.S. corporation or entity for which the alien is the sole or controlling shareholder or owner or over which he or she holds de facto control.<sup>[9]</sup>

Relevant factors for determining whether the alien is self-employed include, but are not limited to:

- Whether the U.S. enterprise is a separate legal entity from the alien;
- Whether the alien has substantial control over the enterprise for which he or she will work in the United States; and
- Whether evidence indicates the U.S. enterprise was established to facilitate the alien’s self-employment in the United States.

### 2. Separate Legal Entity (Substantively Separate)

An alien is ineligible for classification as a TN professional if the enterprise in the United States offering a contract or employment is a sole proprietorship he or she will operate. Even if the receiving enterprise is legally distinct from the alien, such as a corporation having a separate legal existence, entry as a TN professional must be refused if the receiving enterprise is substantially controlled by that alien.<sup>[10]</sup>

### **3. Substantial Control of Enterprise**

Whether an alien substantially controls the U.S. enterprise depends on the specific facts of each case. The relevant factors in determining what constitutes substantial control include, but are not limited to:

- Whether the alien has established the receiving enterprise;
- Whether the alien has sole or primary control of the U.S. enterprise (regardless of the alien's actual percentage of share ownership);
- Whether the alien is the sole or primary owner of the enterprise; and
- Whether the alien is the sole or primary recipient of the enterprise's income.

### **4. Established to Facilitate Self-Employment**

An alien is ineligible for classification as a TN professional if evidence indicates that the enterprise he or she will work for in the United States was established to facilitate self-employment. The following activities may indicate such an intent:

- Incorporation of an enterprise in which the alien will be self-employed; or
- Initiation of communications (for example, by direct mail or by advertising) for the purpose of obtaining employment or entering into contracts for an enterprise in which the alien will be self-employed the United States.

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

- Responding to unsolicited inquiries about service(s) that he or she may be able to perform; or
- Establishing business premises from which to deliver prearranged services to clients.

## **C. Prearranged Professional Services**

To obtain TN classification, an alien must be seeking admission to provide prearranged professional services to an individual person or an enterprise.<sup>[11]</sup> If the business activities are provided to an enterprise, the enterprise must be substantively separate from the alien seeking entry.

To constitute prearranged professional services, a formal arrangement must be in place to provide professional services to an individual person or an enterprise in the United States. The formal arrangement may be through an employee-employer relationship or through a signed contract between the alien or the alien's employer and a person or enterprise in the United States.

## D. Professional Activities in the United States

The enterprise in the United States for which the business activities are to be performed may take any legal form.<sup>[12]</sup> The enterprise can be “any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or government-owned, including any corporation, trust partnership, sole proprietorship, joint venture or other association.”<sup>[13]</sup>

### Footnotes

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[^ 1] Even though the United States-Mexico-Canada-Agreement (USMCA) replaces NAFTA, the USMCA retains all substantive elements of the former NAFTA, and the United States continues to use the TN designation for NAFTA/USMCA professionals.

[^ 2] See 8 CFR 214.6(a)-(c).

[^ 3] See NAFTA Chapter 16, Annex 1603, Section D, Professionals. See USMCA, Chapter 16, Appendix 2 (PDF) (found at page 1322 of the USMCA).

[^ 4] See the U.S. Department of State’s Visas for Canadian and Mexican USMCA Professional Workers webpage.

[^ 5] See 8 CFR 214.6(b).

[^ 6] See INA 101(a)(15)(E). For information on seeking E nonimmigrant classification, see the Temporary (Nonimmigrant) Workers webpage.

[^ 7] See the SAA (PDF) at 179.

[^ 8] See 8 CFR 214.6(b).

[^ 9] See 8 CFR 214.6(b) (definition of engage in activities at a professional level).

[^ 10] See 8 CFR 214.6(b) (definition of engage in activities at a professional level).

[^ 11] See 8 CFR 214.6(b) (definition of engage in business activities at a professional level).

[^ 12] See NAFTA Chapter 2, Article 201, Definitions of General Application.

[^ 13] See NAFTA Chapter 2, Article 201, Definitions of General Application.

## Chapter 3 - Documentation and Evidence

### A. Filing Requirements



## **1. Canadian Citizens**

Canadian citizens residing outside the United States may choose to file a Petition for a Nonimmigrant Worker (Form I-129) with USCIS requesting initial TN status. Canadian citizens may also file Form I-129 if requesting an extension of status while currently in valid TN status, or if requesting a change of status to TN from another valid nonimmigrant status. Canadian citizens usually do not need a visa as a TN professional,<sup>[1]</sup> although the U.S. Department of State (DOS) can issue a visa at a U.S. embassy or consulate to qualified Canadian TN visa applicants upon request. A Canadian citizen without a TN visa may also apply for TN nonimmigrant status at a U.S. port of entry.<sup>[2]</sup>

## **2. Mexican Citizens**

Mexican citizens must file a Petition for a Nonimmigrant Worker (Form I-129) with USCIS if requesting an extension of status while currently in valid TN status, or if requesting a change of status to TN from another valid nonimmigrant status. Mexican citizens residing outside the United States must apply for a TN visa at a U.S. embassy or consulate.<sup>[3]</sup>

## **B. Evidence**

### **1. Business Activity Requirements**

The applicant for TN nonimmigrant classification must demonstrate that he or she will engage in business activities in the United States at a professional level in a profession listed in NAFTA/USMCA. The alien must provide documentation describing the professional activities that he or she will perform for the U.S. employer or entity, including a summary of the daily job duties, if appropriate.<sup>[4]</sup>

### **2. Degree Requirements**

If a profession requires a baccalaureate or licenciatura degree, experience cannot be substituted for that degree. In some professions, an alternative to a bachelor's degree is listed. For some professions, experience is required in addition to the degree.<sup>[5]</sup>

Degrees, diplomas, or certificates received by the alien from an educational institution outside of the United States, Canada, or Mexico must be accompanied by an evaluation by a reliable credentials evaluation service that specializes in evaluating foreign educational credentials.<sup>[6]</sup>

Experiential evidence should be in the form of letters from former employers. If the alien was formerly self-employed, business records attesting to that self-employment must be submitted.

### **3. Professional License Requirements**

The alien must meet applicable license requirements to practice a licensed profession in the U.S. state in which the alien intends to practice.<sup>[7]</sup>

In certain circumstances, although a profession may generally require licensing, there may be duties within the occupation that do not require licensing. A state may require a profession to be licensed for certain activities but not for all activities engaged in by the profession.

For example, a dentist must possess a license in the United States to practice dentistry, but if a Canadian or Mexican citizen is coming to the United States as a TN nonimmigrant to give a seminar on dentistry, a U.S. license is not necessary. A Canadian TN applicant may establish qualifications as a dentist by showing a Canadian provincial license such as a Doctor of Dental Surgery D.D.S. or a Doctor of Medicine in Dentistry D.M.D.<sup>[8]</sup>

Similarly, a Mexican dentist coming to give a seminar on dentistry might show a professional license in dentistry from the Federal Secretary of Education's General Directorship of Professions such as a Doctor en Odontologia Degree or a Doctor en Cirugia Dental Degree.<sup>[9]</sup>

As another example, a Canadian lawyer might be seeking admission as a TN nonimmigrant to offer professional-level legal advice about Canadian law but is not going to practice law in the United States. Such a Canadian citizen would need only to establish qualification as a lawyer in Canada, such as a Juris Doctor (J.D.) degree or provincial bar membership. The same would apply to a Mexican lawyer seeking admission as a TN nonimmigrant offering professional legal advice about Mexican law but is not going to practice law in the United States.

USMCA allows for temporary entry to perform training functions relating to any of the cited occupations or professions, including conducting seminars.<sup>[10]</sup> However, these training functions must be conducted as a prearranged activity performed for a U.S. entity. The subject matter of the training must also be at a professional level. The training function does not allow an alien seeking admission as a TN nonimmigrant to conduct seminars that are not prearranged.

## Footnotes

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[^ 1] Even though the United States-Mexico-Canada-Agreement (USMCA) replaced NAFTA, the USMCA retains all substantive elements of the former NAFTA, and the United States continues to use the TN designation for NAFTA and USMCA professionals.

[^ 2] For information on applying for TN nonimmigrant status at a port of entry, see U.S. Customs and Border Protection's For Canadian and Mexican Citizens webpage and USCIS' TN USMCA Professionals webpage.

[^ 3] See 22 CFR 41.59(c). See 9 FAM 402.17-7, Temporary Entry.

[^ 4] See 8 CFR 214.6(b) (definition of business activities at a professional level). See 8 CFR 214.6(d) (3)(ii)(B).

[^ 5] For a complete list of professions with minimum education requirements and alternative credentials, see NAFTA Appendix 1603.D.1 and Chapter 16, Annex 1603, Section D. See 8 CFR 214.6(c).

[^ 6] See 8 CFR 214.6(d)(3)(ii).

[^ 7] See 8 CFR 214.6(d)(3)(ii) (the applicant must meet “the criteria to perform at” the proposed professional level).

[^ 8] See NAFTA Appendix 1603.D.1 (Dentist).

[^ 9] See NAFTA Appendix 1603.D.1 (Dentist).

[^ 10] See NAFTA Appendix 1603.D.1, n 1.

## Chapter 4 - Extension of Stay and Change of Status

### A. Filing

Both Canadian and Mexican citizens can be admitted, granted extensions of stay, or granted change of status as a TN or TD nonimmigrant in increments of up to 3 years. There is no limit to the number of times a Mexican or Canadian citizen can be granted TN or TD status, provided he or she intends to remain temporarily in the United States as a nonimmigrant.<sup>[1]</sup>

If requesting an extension of stay in the United States, a Mexican or Canadian must apply for an extension of TN<sup>[2]</sup> status or a change of status from another nonimmigrant classification to TN status by filing a Petition for a Nonimmigrant Worker (Form I-129).

Applicants seeking to extend or change their status must file the appropriate form according to the instructions at the time of filing.<sup>[3]</sup>

### B. Evidence

#### 1. Change of Status

Unless otherwise limited by statute, a citizen of Canada or Mexico currently in the United States in another valid nonimmigrant classification may request a change of status to TN.<sup>[4]</sup>

If requesting a change of status to TN, the alien must submit evidence demonstrating that he or she will be engaged in business activities at a professional level and that he or she possesses the required professional qualifications.<sup>[5]</sup> Acceptable evidence may include, but is not limited to, the following:

- A letter from the employer in the United States indicating an offer of employment, the activity to be engaged in, the anticipated length of stay, and the arrangements for remuneration;
- A copy of the alien's last two pay stubs and Wage and Tax Statement (IRS Form W-2), if employed in the United States; and
- Evidence the alien meets the educational or licensing requirements (or both) that apply to the relevant profession or occupation.

## 2. Extension of Stay

If requesting an extension of stay in TN classification, the alien must submit evidence, such as a letter, describing the continuing employment and evidence of his or her continued valid licensing (if required by the profession or the state or both).

## Footnotes

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[^ 1] See INA 214(b).

[^ 2] Even though the United States-Mexico-Canada-Agreement (USMCA) replaces the North American Free Trade Agreement (NAFTA), the USMCA retains all substantive elements of the former NAFTA, and the United States continues to use the TN designation for NAFTA and USMC professionals.

[^ 3] See 8 CFR 103.2(a)(1).

[^ 4] See INA 248. If the alien is in the United States as a nonimmigrant specialty occupation worker (H-1B) or intracompany transferee (L-1), he or she may change to TN classification if otherwise eligible, without regard to the maximum time limits for those classifications. A Canadian who is a nonimmigrant exchange visitor (J) subject to the 2-year foreign residence requirement may not change to TN classification but may leave the United States and seek readmission as a TN nonimmigrant.

[^ 5] See NAFTA Annex 1603, Section D, Professionals and Appendix 1603.D.1.

## Chapter 5 - Other Factors to Consider

### A. Request to Change or Add U.S. Employers

A Canadian or Mexican citizen present in the United States as a TN professional<sup>[1]</sup> may apply to change or add employers<sup>[2]</sup> while in the United States by filing a Petition for a Nonimmigrant Worker (Form I-129). The applicant (not petitioners) must show that he or she meets all applicable documentary requirements.<sup>[3]</sup> Employment with a different or additional employer is not authorized until USCIS approves the application.<sup>[4]</sup>

Alternatively, a Canadian citizen seeking to change or add a U.S. employer may depart the United States and apply for readmission to obtain additional employment authorization with a new or additional employer.<sup>[5]</sup>

A Mexican citizen seeking to change or add a U.S. employer may depart the United States and seek a new visa from a U.S. embassy or consulate before readmission.<sup>[6]</sup> He or she must still meet applicable documentary requirements<sup>[7]</sup> and pay any required fees.

A Canadian or Mexican citizen who is transferred to another location (for example, another branch or office) by the same U.S. employer to perform the same services may do so without seeking readmission or filing a petition with USCIS.<sup>[8]</sup> If the transfer is to a separately incorporated subsidiary or affiliate, the TN nonimmigrant (and any dependents) must file a new Form I-129.

## **B. No Limitations on Length of Stay**

A TN applicant is not admitted or granted TN status indefinitely. TNs are admitted for a certain period of time (up to 3 years) in TN status. There is no cumulative total limiting the period of time a citizen of Canada or Mexico may remain in the United States in TN classification, provided that the TN nonimmigrant continues to be engaged in a TN occupation.<sup>[9]</sup> Citizens of Canada or Mexico seeking a change of status to or extension of stay in TN status, or readmission, must be examined to ensure qualification for such nonimmigrant classification.<sup>[10]</sup>

## **C. Spouse and Unmarried Minor Children**

The spouse and unmarried minor children, who are accompanying or following to join a TN nonimmigrant, if otherwise eligible, are accorded TD classification.<sup>[11]</sup> These aliens are required to present a valid, unexpired nonimmigrant visa unless otherwise visa-exempt.<sup>[12]</sup> There is no requirement that the dependent also be a citizen of Canada or Mexico.

In general, no fee is required for admission of Canadian dependents in TD nonimmigrant status, and dependents are issued documentation allowing for multiple entries into the United States.<sup>[13]</sup>

A dependent spouse or child cannot accept employment while in the United States in TD nonimmigrant status.<sup>[14]</sup> Dependents in TD nonimmigrant status may attend school in the United States on a full-time basis, however, as such attendance is deemed incidental to status.

Spouses and children of TN nonimmigrants are admitted under the TD classification and may apply for extension of stay or a change of status from another nonimmigrant classification to TD status by filing an Application to Extend/Change Nonimmigrant Status (Form I-539). A TD nonimmigrant must provide evidence of the principal's continued TN status or continuing employment and licensing, if required.

## **D. Labor Disputes**

DHS may not classify citizens of Mexico or Canada as a TN nonimmigrant if:

- The Secretary of Labor certifies or otherwise informs USCIS that a strike or other labor dispute such as a lockout involving a work stoppage of workers is in progress in the occupational classification at the place of intended employment; and
- The temporary entry of a citizen of Mexico or Canada in TN nonimmigrant status may adversely affect the settlement of any labor dispute or the employment of any person who is involved in such dispute.<sup>[15]</sup>

## Footnotes

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[^ 1] Even though the United States-Mexico-Canada-Agreement (USMCA) replaces North American Free Trade Agreement (NAFTA), the USMCA retains all substantive elements of the former NAFTA, and the United States continues to use the TN designation for NAFTA and USMC professionals.

[^ 2] See 8 CFR 214.6(i).

[^ 3] See Chapter 3, Documentation and Evidence, Section B, Evidence [2 USCIS-PM P.3(B)].

[^ 4] See 8 CFR 214.6(i)(1).

[^ 5] See 8 CFR 214.6(i)(2).

[^ 6] See 8 CFR 214.6(i)(2).

[^ 7] See Chapter 3, Documentation and Evidence, Section B, Evidence [2 USCIS-PM P.3(B)].

[^ 8] See 8 CFR 214.6(i)(3).

[^ 9] See 8 CFR 214.6(h)(1)(iv).

[^ 10] See INA 214(b).

[^ 11] See 8 CFR 214.6(j).

[^ 12] See 8 CFR 212.1 for documentary requirements for nonimmigrants, including visa exemptions.

[^ 13] See 8 CFR 214.6(j)(3).

[^ 14] See 8 CFR 214.6(j)(4).

[^ 15] See 8 CFR 214.6(k).

## Chapter 6 - Requirements for Specific Occupations

The following sections provide further guidance on TN admissions sought in specific occupations.<sup>[1]</sup> A TN applicant must demonstrate that he or she will perform the duties described below. A job title or the employer's categorization of the job does not establish eligibility.<sup>[2]</sup>

## **A. Scientific Technician/Technologist**

Eligibility for admission as a Scientific Technician/Technologist (ST/T) under the provisions of the United States-Mexico-Canada-Agreement (USMCA) requires, among other things, that the alien is a businessperson possessing:

- A theoretical knowledge of any of the following disciplines: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology, or physics; and
- The ability to solve practical problems in any of those disciplines, or the ability to apply the principles of any of those disciplines to basic or applied research.<sup>[3]</sup>

### **1. Direct Support of Supervisory Professional**

Aliens in the ST/T category must be coming to work in direct support of a supervisory professional.<sup>[4]</sup> The supervisory professional must individually qualify as a professional in agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology, or physics.<sup>[5]</sup> Regardless of the ST/T's individual qualifications, the supervisory professional's duties being supported by the ST/T must be within the duties of a qualified professional in one of these listed fields.

The footnotes to the appendix found in 8 CFR 214.6(c) are specific as to the fields, and by extension the professions that an ST/T may support. Note 6 does not include any work involving the support of a professional who is providing patient care, because neither the field of medicine nor that of patient care are fields identified in note 6.

A radiologic technologist who supports a physician that is providing patient care would therefore not qualify under note 6. The fact that a physician (for instance, a radiologist) may have studied or have expertise in biology, chemistry or physics is not relevant; what is relevant for purposes of the ST/T TN classification is whether the radiologist is providing patient care and the TN applicant is seeking to provide direct support to the radiologist in providing patient care.<sup>[6]</sup>

On the other hand, an alien might qualify as an ST/T if, for example, he or she is engaged in research that supports a professional who may be a physician (among other qualifications) but is working as a biologist or chemist, and not as a physician whose role is providing patient care.<sup>[7]</sup>

Moreover, a general offer of employment is not sufficient, by itself, to qualify as an ST/T. The offer must demonstrate that the work of the ST/T will be directly relevant to supporting the duties required of the supervisory professional, meaning the work must be managed, coordinated, and reviewed by the professional supervisor and must also be in direct support of the supervisory professional's own work.

## **2. Nature of the Work Intended to Support the Supervisory Professional**

The ST/T's position in the United States must primarily involve activities that are consistent with an ST/T. Whether a particular job is that of an ST/T is determined by the primary activity the alien will perform, not by the title of the position offered. In determining said primary activity, occasional or merely incidental hands-on work by the supervisory professional is not disqualifying.<sup>[8]</sup>

The alien should not be coming to do work that is normally performed by the construction trades (such as welders, boilermakers, carpenters, electricians), even where these trades are specialized to a particular industry (for example, aircraft, power distribution). Such aliens are not admissible as ST/Ts.  
<sup>[9]</sup>

In determining whether the activities to be performed are qualifying, officers must consider all the facts presented and not rely solely on one source or piece of evidence in making this determination.

In this regard, officers may consult the U.S. Department of Labor's (DOL) Occupational Outlook Handbook (OOH) and other reliable sources, such as DOL's Standard Occupational Classification (SOC) system,<sup>[10]</sup> in determining whether proposed job functions are consistent with those of a scientific technician or technologist. Officers must consider all of the alien's documented training and experience. In all cases, officers must evaluate eligibility for TN classification based on the primary activity and not simply by the job title.

Neither the OOH nor the SOC, however, are specific to the requirements of the TN classification and are not determinative. Instead, these references must be weighed considering all the facts presented.

## **3. Training or Education Required**

The ST/T's theoretical knowledge in the specific discipline generally should have been acquired through the successful completion of at least 2 years of training in a relevant educational program. Such training may be documented by presentation of a diploma or certificate. An ST/T is not required to have a baccalaureate degree and may instead provide documentation of extensive work experience directly related to the profession. USCIS weighs the lack of degree in consideration of the entire record.

## **B. Other Specialty Occupations**

### **1. Medical Laboratory Technologist (Canada) and Medical Technologist (Mexico and United States)**

An alien 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.<sup>[11]</sup> The alien must present the health care worker certification described in this chapter.



## **2. Physician (Teaching or Research Only)**

Foreign medical school graduates seeking temporary entry in this category may not engage in direct patient care. Patient care incidental to teaching or research, however, is permissible.<sup>[12]</sup> To determine if the patient care will be incidental, examples of relevant factors include, but are not limited to:

- The amount of time spent in patient care relative to teaching or research;
- Whether the physician receives compensation for patient care services;
- Whether the salary offer is so substantial in teaching or research that direct patient care is unlikely; and
- Whether the physician will have a recurring or scheduled patient load.

## **3. Registered Nurses**

Registered nurses must demonstrate eligibility for TN status based on this specific occupation by providing a provincial or state license or licenciatura degree.<sup>[13]</sup> However, in order to be admitted as a TN nonimmigrant, 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.<sup>[14]</sup> Admission of nurses should not be limited to the expiration date of these documents.

In addition, registered nurses must present a certificate from the Commission on Graduates of Foreign Nursing Schools or an equivalent credentialing organization.<sup>[15]</sup>

## **4. Silviculturists and Foresters**

Silviculturists<sup>[16]</sup> and foresters plan and supervise the growing, protection, and harvesting of trees. Range managers improve, protect, and manage rangelands to maximize their use without damaging the environment. A baccalaureate or licenciatura degree in forestry or a related field or a state or provincial license is the minimum entry requirement for these occupations.<sup>[17]</sup>

## **5. Disaster Relief Insurance Claims Adjusters**

Disaster relief insurance claims adjusters must submit documentation that there is a declared disaster event. In general, an event can only be considered a disaster event upon declaration by at least one of the following:

- The President of the United States;
- A state statute or a local ordinance; or
- The Property Claims Service of the American Insurance Services Group through the assignment of a catastrophe serial number to the disaster event site.

An association of insurance companies representing at least 15 percent of the property casualty market in the United States may also declare a disaster if associated property damage exceeds \$5 million and represents a significant number of claims.

## **6. Management Consultants**

Management consultants provide services that improve the managerial, operating, and economic performance of public and private entities by analyzing and resolving strategic and operating problems to improve the entity's goals, objectives, policies, strategies, administration, organization, and operation.

To demonstrate eligibility for TN status based on this specific occupation, an alien must show:

- Proof of a baccalaureate or licenciatura degree;
- Equivalent professional experience as established by a statement or professional credential attesting to 5 years' experience as a management consultant; or
- Professional experience in a field of specialty related to the consulting agreement as evidenced by 5 years' experience.<sup>[18]</sup>

Management consultants are usually independent contractors or employees of consulting firms under contracts to U.S. entities. A management consultant may be a salaried employee of the U.S. entities to which he or she is providing services but may only fill irregular or non-routine temporary positions. If the employer is a U.S. management-consulting firm, the alien may be admitted temporarily to fill an otherwise permanent position.

## **7. Computer Systems Analyst**

A computer systems analyst requires a baccalaureate or licenciatura degree. In the alternative, the analyst may have a post-secondary diploma or certificate and 3 years' experience.<sup>[19]</sup> An acceptable post-secondary diploma is a credential issued, on completion of 2 or more years of post-secondary education, by an accredited academic institution in Canada or the United States.<sup>[20]</sup>

An acceptable post-secondary certificate is a certificate issued upon completion of 2 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.<sup>[21]</sup>

While systems analysts may perform some programming, this category does not include programmers. A systems analyst is an information specialist who analyzes how data processing can be applied to the specific needs of users and who designs and implements computer-based processing systems. Systems analysts study the organization itself to identify its information needs and design computer systems that meet those needs.

## **8. Hotel Managers**

Hotel managers must possess a baccalaureate or licenciatura degree in hotel or restaurant management. A post-secondary diploma in hotel or restaurant management plus 3 years of experience in the field is also sufficient to show a TN applicant qualifies under this specific occupation.<sup>[22]</sup>

## **9. Animal and Plant Breeders**

Animal and plant breeders breed animals and plants to improve their economic and aesthetic characteristics. Both occupations require a baccalaureate or licenciatura degree.<sup>[23]</sup>

## **10. Economists**

An economist must have a baccalaureate or a licenciatura degree.<sup>[24]</sup> Whether a particular job is that of an economist is determined by the primary activity, not by the title of the job. For purposes of the TN classification, the profession of economist does not include positions where the duties are primarily the activity of other occupations, such as those performed by financial analysts, market research analysts, and marketing specialists.

Economists generally specialize in either microeconomics (analyzing the behavior of individual people and firms with the aim of understanding the relationships between supply and demand) or macroeconomics (analyzing aggregated indicators to determine how different sectors of the economy relate to each other).<sup>[25]</sup> In addition to these two broad focus areas, economists may apply economic analysis to issues in a variety of fields, such as labor, international trade, development, econometrics, education, health, and industrial organization, among other fields.

The DOL's Standard Occupational Classification (SOC) system<sup>[26]</sup> defines economists as conducting research, preparing reports, or formulating plans to address economic problems related to the production and distribution of goods and services or monetary and fiscal policy.<sup>[27]</sup> Economists may collect and process economic and statistical data using sampling techniques and econometric methods.<sup>[28]</sup>

The SOC's definition of the economist occupation specifically excludes the occupations of market research analyst and marketing specialist (SOC #13-1161).<sup>[29]</sup> To be consistent with the SOC, USCIS does not consider the economist occupation to include persons engaged primarily in activities associated with market research analysts and marketing specialists, as described in the SOC and the Occupational Outlook Handbook (OOH).

## **11. Engineers**

A baccalaureate or licenciatura degree or a state or provincial license is required to qualify for TN nonimmigrant status under the occupational category for engineer.<sup>[30]</sup> The degree must be in the

related engineering field. Officers may refer to DOL publications, such as the OOH, to determine the types of degrees suitable for engineers.

An engineer may not fill computer-related jobs unless he or she has credentials as a computer or software engineer in a bona fide engineering specialty offering full engineering credentials, such as professional engineering licenses.

## Footnotes

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[^ 1] See USMCA Appendix 1603.D.1. See the footnotes to the appendix found in 8 CFR 214.6(c).

[^ 2] In certain cases, the officer may determine that a foreign health care worker certification is required. See 8 CFR 212.15(k).

[^ 3] See USMCA Appendix 1603.D.1. See the footnotes to the appendix found in 8 CFR 214.6(c).

[^ 4] See USMCA Appendix 1603.D.1, footnote 5. See 8 CFR 214.6(c), n. 6.

[^ 5] See 8 CFR 214.6(c), n. 6. The ST/T applicant is not required to have been trained in or normally be employed in the same discipline as the supervisory professional he or she is supporting. However, if the ST/T applicant is normally engaged in a different discipline, there must be an articulable relevant nexus between the ST/T applicant's experience and training and the performance of the duties required to provide direct support to the supervisory professional. For example, if the applicant for TN classification as an ST/T has training and experience only in the field of astronomy and cannot demonstrate relevant training and/or professional experience performing duties that are required to support a meteorologist, he or she would not qualify for TN classification as an ST/T supporting a meteorologist under 8 CFR 214.6(c), n. 6. The alien may, however, qualify were he or she seeking to provide direct support to an astronomer.

[^ 6] For the same reason, this analysis would apply to Polysomnographic Technologists, Cardiovascular Technicians, Sonographers, Medical Dosimetrists, Nuclear Medicine Technologists, and other occupations working in support of physicians providing patient care.

[^ 7] While USCIS has in the past approved certain ST/Ts supporting physicians providing patient care, there has not been a formal USCIS policy regarding adjudication of ST/Ts who provide patient care, nor has there been a consistent past practice within USCIS or as between USCIS adjudications and U.S. Customs and Border Protection (CBP) admissibility determinations. Therefore, this guidance does not constitute a change in practice or policy but rather constitutes an effort by USCIS to provide policy guidance to adjudicators to ensure consistent adjudications with respect to ST/Ts seeking TN classification under and consistent with DHS regulations at 8 CFR 214.6(c) and note 6.

[^ 8] The officer determines what is 'occasional' or 'incidental' on a case-by-case basis.

[^ 9] See 8 CFR 214.6(c) which excludes construction trades as eligible, stating that, “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.”

[^ 10] Federal statistical agencies use the SOC system to classify workers into occupational categories. The system classifies all workers into one of 840 detailed occupations according to their occupational definition. To facilitate classification, detailed occupations are combined to form 461 broad occupations, 97 minor groups, and 23 major groups. Detailed occupations in the SOC with similar job duties, and in some cases skills, education, or training are grouped together.

[^ 11] See 8 CFR 214.6(c), n 7.

[^ 12] Patient care is incidental when it happens in conjunction with the physician’s teaching or research.

[^ 13] See 8 CFR 214.6(c).

[^ 14] See INA 212(m)(1)(C).

[^ 15] See 8 CFR 212.15.

[^ 16] Silviculture is the growing and cultivation of trees.

[^ 17] See 8 CFR 214.6(c).

[^ 18] See 8 CFR 214.6(c).

[^ 19] See 8 CFR 214.6(c).

[^ 20] See 8 CFR 214.6(c), n. 3.

[^ 21] See 8 CFR 214.6(c), n. 4.

[^ 22] See 8 CFR 214.6(c).

[^ 23] See 8 CFR 214.6(c).

[^ 24] See 8 CFR 214.6(c).

[^ 25] DOL’s Bureau of Labor Statistics (BLS) provides a formal description of the economist occupation on its Occupational Outlook Handbook (OOH) webpage.

[^ 26] Federal statistical agencies use the SOC system to classify workers into occupational categories. The system classifies all workers into one of 840 detailed occupations according to their occupational definition. To facilitate classification, detailed occupations are combined to form 461

broad occupations, 97 minor groups, and 23 major groups. Detailed occupations in the SOC with similar job duties, and in some cases skills, education, or training are grouped together.

[^ 27] SOC system definition of Economist (#19-3011).

[^ 28] SOC system definition of Economist (#19-3011).

[^ 29] TN nonimmigrant economists are defined by qualifying business activity.

[^ 30] See 8 CFR 214.6(c).

## Part Q - Nonimmigrants Intending to Adjust Status (K, V)

In May 2020, USCIS retired its Adjudicator's Field Manual (AFM), a collection of our immigration policies and procedures.

[See more](#)

In May 2020, USCIS retired its Adjudicator's Field Manual (AFM), a collection of our immigration policies and procedures. We are working quickly to update and incorporate all of the AFM content into the USCIS Policy Manual, the agency's centralized online repository for immigration policies. Until then, we have moved any remaining AFM content to its corresponding Policy Manual Part. To the extent that a provision in the Policy Manual conflicts with remaining AFM content or Policy Memoranda, the updated information in the Policy Manual prevails. If you have questions or concerns about any discrepancies among these resources, contact [PolicyFeedback@uscis.dhs.gov](mailto:PolicyFeedback@uscis.dhs.gov).

AFM Chapter 37 - Nonimmigrants Intending to Adjust Status (K and V Classifications) (External)

## Volume 3 - Humanitarian Protection and Parole

### Part A - Protection and Parole Policies and Procedures

### Part B - Victims of Trafficking

#### Chapter 1 - Purpose and Background

##### **A. Purpose**

Human trafficking (also known as trafficking in persons) involves the exploitation of persons in order to compel labor, services, or commercial sex acts.<sup>[1]</sup> The Trafficking Victims Protection Act (TVPA), part