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USCIS Updates Policy Manual on TN Visa Requirements

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U.S. Citizenship and Immigration Services (USCIS) released updated policy guidance in the USCIS Policy Manual regarding certain eligibility requirements, including filing, requirements for classification, and change of status relating to the "TN" nonimmigrant visa classification under the United States-Mexico-Canada Agreement (USMCA), formerly known as the North American Free Trade Agreement (NAFTA). The TN nonimmigrant classification permits qualified Canadian and Mexican citizens to seek temporary entry into the United States to engage in business activities within specific professional occupations. The TN visa can be applied for in three-year (3-year) increments.

USCIS made a few notable updates, including further clarifications, to its policy guidelines in the following areas:

- TN Visa Sponsorship and Application Procedure
- Documentation to the TN Visa
- TN Professions & Changes to Requirements

TN Visa Sponsorship and Application Procedure

There has been confusion in the past as to whether a TN visa required sponsorship from an employer because the application process has been less formal than some other employment-based visa categories, such as an H-1B visa, which requires employers to provide a submission to the Department of Labor (DOL) and to file a petition with USCIS. The updated policy guidelines provide clarification on who the TN sponsor can be and how the sponsor can apply for the TN visa. Previously, a foreign employer doing business in the U.S. could sponsor a TN visa. However, the latest update specifies that employment in the United States must be with a "U.S. employer or entity." Additionally, the guidelines provide clarification that self-employment no longer qualifies for TN classification. If a foreign national will be employed in the United States by a corporation or entity for which the foreign national is the sole or controlling shareholder or owner, that foreign national is considered self-employed. If TN classification is not possible under the new requirement, the foreign national may be more successful by applying for the E Treaty visa.

The updated policy guidance provides additional details on how to apply for a TN visa, which differ based on whether the individual is a Canadian or Mexican national.

Canadian citizens may apply for a TN by: having a TN petition filed with USCIS (regardless of whether they are already physically in the U.S.);

applying at the U.S. embassy or a consulate qualified to issue Canadian TN visas; or applying at a U.S. port of entry, at a U.S. Class A port-of-entry, at an airport handling international flights, or at a pre-clearance or pre-flight station in Canada. USCIS also included preferred entry points to apply for a Canadian TN at the port of entry: https://www.cbp.gov/travel/canadian-and-mexican-citizens/traveling-tn-or-l1-visa-canada.

Mexican citizens, on the other hand, may apply for a TN by: having a TN petition filed with USCIS (only if they are already physically in the U.S.), or by applying at a U.S. embassy or consulate. Additionally, clarifying whether the visa requires sponsorship, the guidelines now explicitly state that when an individual is adding or changing employers, the individual should follow the proper applicable visa application steps (petition filed with USCIS, visa application at the U.S. embassy or consulate, or visa application at the port-of-entry) to add or change employers.

Documentation for the TN Visa

To apply for the TN visa, the applicant must demonstrate that they meet the business activity requirements and the applicant's qualifications. The applicant is required to demonstrate that the business activity falls within an accepted profession, confirm the name of the U.S. employer or entity, and describe the job duties align with the professional occupation. Additionally, the applicant must demonstrate that they have the requisite professional qualifications (that is, he or she meets the specific requirements, education, and experience, as applicable). In this regard, 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. Degrees, diplomas, or certificates received by the foreign national from an educational institution outside of the United States, Canada, or Mexico must be accompanied by an evaluation by a reliable credentialing evaluation service that specializes in evaluating foreign educational credentials. Additionally, if experience is required for the profession, curriculum vitae or resumes are no longer sufficient and evidence should be in the form of letters from former employers.

The policy guidelines also provide clarification when licenses are required. The foreign national must meet applicable license requirements to practice a licensed profession in the U.S. state in which the foreign national intends to practice. 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 travels to the United States as a TN nonimmigrant to present at 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. Similarly, a Mexican dentist traveling to the United

States to present at 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. USMCA allows for temporary entry to perform training functions relating to any of the cited occupations or professions, including conducting seminars.

TN Professions & Changes to Requirements

USCIS has provided more specific guidelines on the requirements for various NAFTA/UCMCA professions, including:

- **Scientific Technician/Technologist:** Individuals must possess theoretical knowledge in certain disciplines (g., agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology, or physics) and the ability to either solve practical problems in those areas or the ability to apply the principles of those disciplines to research. These foreign nationals must directly support a supervisory professional. The supervisory professional's duties must also be those of a professional in, e.g., agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology, or physics. Additionally, the guidelines specifically exclude patient care and medicine.
- **Medical Laboratory Technologist/Medical Technologist:** The foreign national would perform laboratory chemical, biological, hematological, immunologic, microscopic, or bacteriological tests and analyses for diagnosis, treatment, or prevention of diseases, and must present the applicable health care worker certification described in this chapter.
- **Physician (Teaching or Research Only):** The physician may not engage in direct patient care. Patient care incidental to teaching or research, however, is permissible. 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.
- **Registered Nurses:** 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 these documents. In addition, registered nurses must present a certificate from the Commission on Graduates of Foreign Nursing Schools or an equivalent credentialing organization.
- **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. 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 foreign national may be admitted temporarily to fill an otherwise permanent position.

- **Computer Systems Analyst:** 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.
- **Economists:** 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.
- **Engineers**: The engineering profession requires baccalaureate or licenciatura degree in the related engineering field or a state or provincial license. 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.
- **Other professions:** Sylviculturists and Foresters, Disaster Relief Insurance Claims Adjusters; Hotel Managers, and Animal Breeders.

These policy updates may affect both new TN applicants and current visa holders during renewal processes. Organizations with potentially affected employees should consult with immigration counsel to evaluate compliance strategies and available options.

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