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DEPARTMENT OF JUSTICE (DOJ)

Immigration and Naturalization Service

**8 CFR Parts 103, 212, 214, 235, and 274a**

**[INS No. 1611-93]**

RIN 1115-AB72

**Temporary Entry of Business Persons Under the North American Free Trade Agreement (NAFTA)**

*58 FR 69205*

**DATE:** Thursday, December 30, 1993

**ACTION:** Interim rule with request for comments.

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[\*69205]

**SUMMARY:** This rule implements provisions of the North American Free Trade Agreement (NAFTA) by amending the Immigration and Naturalization Service (Service) regulations to establish procedures for the temporary entry of Canadian and Mexican citizen business persons into the United States. This rule will facilitate temporary entry on a reciprocal basis among the United States, Canada, and Mexico, while recognizing the continued need to ensure border security, and to protect indigenous labor and permanent employment in all three countries.

**DATES:** The effective date is January 1, 1994. Written comments must be submitted on or before February 28, 1994.

**ADDRESSES:** Please submit written comments, in triplicate, to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5307, Washington, DC 20536. To ensure proper handling, please reference INS number 1611-93 on your correspondence.

**FOR FURTHER INFORMATION CONTACT:** Jacquelyn A. Bednarz, Chief, Nonimmigrant Branch,

Immigration and Naturalization Service, 425 I Street, NW., room 7122, Washington, DC 20536, telephone (202) 514-5014.

**SUPPLEMENTARY INFORMATION:** On December 17, 1992, the Presidents of the United States and Mexico and the Prime Minister of Canada entered into the North American Free Trade Agreement (NAFTA). Implementation of this agreement has been provided for by the North American Free Trade Agreement Implementation Act (NAFTA Implementation Act), Public Law 103-182. The NAFTA Implementation Act was signed into law by the President of the United States on December 8, 1993. The NAFTA is currently set to enter into force on January 1, 1994.

This rule pertains to Canadian and Mexican citizen temporary visitors for business seeking classification under section 101(a)(15)(B) of the Immigration and Nationality Act (Act), to Canadian and Mexican citizen treaty traders and investors seeking classification under section 101(a)(15)(E) of the Act, to Canadian and Mexican citizen temporary workers seeking classification under section 101(a)(15)(L) of the Act, and to Canadian and Mexican citizens seeking classification for engagement in activities at a professional level under section 214(e) of the Act, as amended by section 341(b) of the NAFTA Implementation Act.

This rule establishes procedures for the temporary entry of Canadian and Mexican citizen business persons as provided in chapter 16 of the NAFTA and subtitle D of title III of the NAFTA Implementation Act. Chapter 16, subtitle D of title III, and this rule reflect the special trading relationship now established between the United States, Canada, and Mexico, and recognize the desirability of facilitating temporary entry on a reciprocal basis and of establishing transparent criteria and procedures for such temporary entry. At the same time, full recognition is given to the continued need to ensure border security while protecting the domestic labor force and permanent employment in all three countries.

The immigration-related provisions of the NAFTA are similar to those contained within the United States-Canada Free Trade Agreement (CFTA), which has been in force since January 1, 1989. The CFTA will be suspended when the NAFTA enters into force. The NAFTA provisions relate to the same four nonimmigrant classifications which were impacted by the CFTA: B-1, E, L-1, and Professional (previously designated TC for Canadian citizens under CFTA and redesignated TN for Canadian and Mexican citizens under NAFTA).

Section D of Annex 1603 of the NAFTA, however, permits the United States to establish a numerical limit with respect to professionals from Mexico for a transition period of up to ten years. Under Appendix 1603.D.4 of the NAFTA, beginning on the date of entry into force of the NAFTA, the numerical limit is set at 5,500 for such Trade Professionals annually. The United States and Mexico may mutually agree to increase the numerical limit or eliminate it entirely prior to the end of the ten year period.

Along with the numerical limit, citizens of Mexico who seek classification as a professional must do so on the basis of a petition filed by a United States employer. Before the employer may file the petition, it will be required to meet the labor attestation requirements of section 212(m) of the Act in the case of a registered nurse, and the application requirement of section 212(n) of the Act in the case of all other professionals set out in Appendix 1603.D.1 of the NAFTA.

Additionally, Article 1603 of the NAFTA states that each party to the agreement may refuse to issue an immigration document to a NAFTA business person where the temporary entry of that person may affect adversely the settlement of any labor dispute in progress at the place or intended place of employment, or if temporary entry would affect adversely the employment of any person involved in such dispute. The regulations relating to classification and admission of citizens of Canada and Mexico in the E, L-1, and Professional categories have been amended to reflect this provision. These provisions are designed to protect the domestic labor force of each signatory country.

Specific changes to 8 CFR are as follows:

*8 CFR 103.1(f)(2)*

Paragraphs (f)(2)(X) and (f)(2)(xxiii) of § 103.1 have been amended to include within the appellate jurisdiction of the Associate Commissioner, Examinations, those petitions filed by United States employers in behalf of citizens of Mexico seeking classification as professionals under Appendix 1603.D.1 to Annex 1603 of the NAFTA.

*8 CFR 103.7(b)*

Section 103.7(b) is amended to allow for the entry of citizens of Canada to engage in business activities at a professional level pursuant to chapter 16 of the NAFTA, rather than pursuant to chapter 15 of the CFTA, which will be suspended with entry into force of the NAFTA. The processing fee to be remitted upon entry remains \$ 50.00. It should be noted that no fee is to be remitted by a citizen of Canada who has been previously admitted in TC status and is seeking readmission to the United States in TN status for the remainder of the period authorized on Form I-94 (Arrival-Departure Record). [\*69206] No fee is to be remitted by a citizen of Mexico who is entering to engage in business activities at a professional level.

*8 CFR 212.1(1)*

Section B to Annex 1603 of the NAFTA provides for the temporary entry of Canadian and Mexican citizens as treaty traders and investors. Section 341(a) of the NAFTA Implementation Act provides that such persons are considered to be classifiable as a nonimmigrant under section 101(a)(15)(E) of the Act. (Canadians were previously classifiable as treaty traders and investors under the CFTA.) Paragraph (1) is amended to replace the reference to the CFTA with a reference to the NAFTA. The requirement that an alien seeking admission as a treaty trader or investor be in possession of a nonimmigrant visa is maintained.

*8 CFR 214.2(b)(1)*

Section 214.2(b)(1) is amended to remove the language authorizing the admission in B-2 visitor status of the dependents of Canadian citizens admitted as TC professionals under the CFTA. A separate nonimmigrant visa classification has been established for the dependents of Professionals seeking entry under the NAFTA and has been designated TD (Trade Dependent).

*8 CFR 214.2(b)(4)*

Section 214.2(b)(4) is amended to provide for the entry in B-1 nonimmigrant classification of citizens of Mexico and Canada pursuant to Section A of Annex 1603 of the NAFTA. Additionally, Schedule 1 to Annex 1502.1 of the CFTA is replaced with Appendix 1603.A.1 to Annex 1603 of the NAFTA. Appendix 1603.A.1 is a list of business activities representative of a complete business cycle in which a B-1 business visitor seeking entry under the NAFTA may engage. Appendix 1603.A.1 is not an exhaustive list. Nothing precludes a citizen of Mexico or Canada from seeking entry to engage in traditional B-1 activities which are not included within Appendix 1603.A.1., provided they meet all requirements for entry in such status, including restrictions on sources or remuneration.

Appendix 1603.A.1 as it is contained within paragraph (b)(4)(i) of this section is almost identical with Schedule 1. The language has been amended to include citizens of Mexico. It should be noted that, during the course of negotiations relating to the NAFTA immigration provisions, Mexico decided not to be a Party to the language involving temporary entry of customs brokers into the signatory countries. Therefore, Mexican citizen customs brokers are not referenced in Appendix 1603.A.1 nor are they included in this regulatory amendment. A citizen of Mexico is not, however, precluded from seeking entry into the United States in B-1 status to perform the functions of a customs broker, provided that the individual meets all existing requirements for B-1 admission. Also, specific reference to the allowable activities of tour bus operators has been included at paragraph (b)(4)(i)(G)(6).

*8 CFR 214.2(e)*

A new paragraph (e)(3) sets in regulation the language regarding the denial of E treaty trader or investor classification to a citizen of Canada or Mexico in the case of certain labor disputes. Article 1603(2) of the NAFTA permits the United States to deny E classification where the temporary entry of the citizen of Canada or Mexico may affect adversely the settlement of a labor dispute or the employment of a person involved in such a dispute.

A strike or other work stoppage of workers must be first certified to or otherwise be made known to the Attorney General by the Secretary of Labor before a citizen of Canada or Mexico seeking E classification maybe denied entry under this paragraph.

Regulations pertaining to the denial of issuance of E visas will be provided by the Department of State.

The Service is not, at this time, amending section 248 of this chapter relating to change of nonimmigrant classification. Citizens of Canada and Mexico are, however, classifiable as treaty traders and investors under the NAFTA and may, therefore, seek to change status to E-1 or E-2 classification while in the United States. If such change of status is granted to a citizen of Canada or Mexico and he or she subsequently departs the United States, he or she must obtain a valid E-1 or E-2 visa from a consular officer in order to seek reentry into the United States in that status.

*8 CFR 214.2(1)(17)*

Paragraph (1)(17)(i) is revised to limit the ports of entry which will accept and adjudicate Form I-129 (Petition for a Nonimmigrant Worker) filed in behalf of a Canadian citizen beneficiary seeking classification as an L-1 intracompany transferee. In order to provide more efficient service, it was decided to limit port adjudication of Form I-129 to those ports of entry located along the U.S.-Canadian border and at pre-flight/pre-clearance stations located in Canada. It is at these ports of entry where, since entry into force of the CFTA, the vast majority of Forms I-129 have been filed, rather than at ports along the U.S.-Mexican border or at international airports within the U.S. Also, most ports of entry along the U.S.-Canadian border have Free Trade Examiners on staff who have expertise in the adjudication of such forms.

It was determined to be more beneficial to the public to concentrate such adjudication along the U.S.-Canadian land border and at pre-flight stations within Canada. Those few individuals who would have filed a Form I-129 at either a port of entry on the U.S.-Mexican border or at an international airport located within the U.S. may do so with the Director of the appropriate Service Center.

*8 CFR 212.2(1)(18)*

A new paragraph (1)(18) has been added to provide for denial of L-1 classification for a citizen of Mexico or Canada if there is a labor dispute in progress at the place of current or intended employment. If a strike or work stoppage of workers has been certified by or otherwise made known by the Secretary of Labor to the Attorney General, the Service may deny a petition for L-1 classification, suspend an approved petition, or deny entry to a citizen of Canada or Mexico seeking L-1 classification at a port of entry.

A citizen of Canada or Mexico who has been admitted for employment in L-1 classification at a location where a labor dispute has been certified by the Secretary of Labor shall not be deemed to be failing to maintain status solely on account of participation in the strike or other labor dispute. Additionally, participation in a strike or work stoppage does not extend or modify in any way the L-1's period of authorized stay in the United States.

*8 CFR 214.6*

Section 214.6 was added to 8 CFR when the CFTA entered into force on January 1, 1989 and provided for the classification and admission of Canadian citizens seeking temporary entry to engage in business activities at a

professional level. The classification was designated TC (Trade Canada). Chapter Sixteen of the NAFTA allows citizens of Mexico to seek temporary entry to engage in business activities at a professional level as well as citizens of Canada. The nonimmigrant classification has been redesignated TN (Trade NAFTA), and specific requirements for citizens of Mexico have been set forth in this revision of § 214.6. As with the CFTA, admission as a TN under this section does not imply [\*69207] that the citizen of Canada or Mexico would otherwise qualify as a professional under sections 101(a)(15)(H)(i) or 203(b)(3) of the Act.

Paragraph (a) is amended to replace the reference to the CFTA with reference to the NAFTA and include citizens of Mexico among those business persons who can seek entry to engage in business activities at a professional level.

Paragraph (b) contains definitions of terms used within § 214.6. Definitions of the terms "business person", "business activities at a professional level", and "temporary entry" were not substantively modified except to replace references to the CFTA with the NAFTA. A new definition of the term "engage in business activities at a professional level" has been included and does not allow for entry in TN status of those business persons who are seeking entry to engage in self-employment. Such self-employment was never specifically addressed under the regulations promulgated by the Service in response to the CFTA.

Annex 1603, Section B, establishes the appropriate category of temporary entry for a Party citizen seeking to develop and direct investment operations in another Party country, while Annex 1603, Section D, provides for the entry of a Party citizen seeking to render professional level services for an entity in another Party country. As stated in the NAFTA Implementation Act Statement of Administrative Action at page 178, "Section D of Annex 1603 does not authorize a professional to establish a business or practice in the United States in which the professional will be self-employed." Canadian or Mexican citizens seeking to engage in self-employment in trade or investment activities in this country must seek classification under section 101(a)(15)(E) of the Act.

Paragraph (c) sets 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 CFTA at *8 CFR 214.6(d)(2)(ii)*. A baccalaureate 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 professions, including conducting seminars. However, these training functions must be conducted in the manner of prearranged activities performed for a United States 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 United States entity.

Paragraph (d) sets forth procedures for the classification of a citizen of Mexico as a TN professional under the NAFTA. Paragraphs (4) and (5) of Annex 1603(D) and of the NAFTA permit the establishment of an annual numerical limit on the number of persons seeking entry to engage in Appendix 1603.D.1 professions in the United States, with consideration given to raising the limit each year thereafter. Appendix 1603.D.4 of Annex 1603 sets the limit for the first year following entry into force of the NAFTA at 5,500 initial petitions for citizens of Mexico seeking TN classification.

Additionally, Annex 1603(D)(5) states that a Part, after establishing a numerical limit, may require the business person subject to the numerical limit to comply with other procedures in place for the temporary entry of professionals. It should be noted that, under Appendix 1604.D.4(3), the provisions of paragraphs (4) and (5) of Annex 1603(D) shall apply no longer than ten years after the date of entry into force of the NAFTA.

Paragraph (d)(1) requires the prospective United States employer of a Mexican citizen seeking classification as a

TN to file a petition on Form I-129 with the Northern Service Center. This is the only Service Center designated by Headquarters Service Center Operations to accept Form I-129 filed on behalf of a citizen of Mexico seeking such classification. This limitation on filing will allow for specialization at the Northern Service Center and will improve adjudication efficiency.

Supporting documentation requirements are contained in paragraph (d)(2). Section 341(b)(5) of the NAFTA Implementation Act provides that, while the numerical limit is in place for citizens of Mexico, entry of such persons shall be subject to the attestation requirements of section 212(m) of the Act, in the case of a registered nurse, or the application requirement of section 212(n) of the Act, in the case of all other professionals set out in Appendix 1603.D.1 of Annex 1603 of the NAFTA. Therefore, Form I-129 shall be filed in conjunction with evidence that the employer has filed with the Secretary of Labor either Form ETA 9029 in the case of a registered nurse, or Form ETA 9035 in the case of all other Appendix 1603.D.1 professionals.

Additionally, the employer must submit evidence that the beneficiary meets the minimum education requirements or alternative credentials requirements set forth in Appendix 1603.D.1. The regulation requires that degrees, diplomas, or certificates received by the beneficiary from an educational institution located outside of the United States, Canada, or Mexico must be accompanied by an evaluation by a reliable credentials evaluation service which specializes in such evaluations. Experiential evidence should be in the form of letters from former employers. If the beneficiary was formerly self-employed, business records should be submitted attesting to that self-employment.

Also, the petition must be accompanied by a separate statement from the United States employer specifically stating the Appendix 1603.D.1 profession in which the beneficiary will be engaging and giving a detailed description of the duties to be performed on a regular basis by the beneficiary. The Appendix 1603.D.1 profession is to be specifically set forth so that it may be noted for statistical purposes and to provide for more accurate adjudication of the petition in light of the proposed job duties.

Evidence of appropriate licensure must accompany the petition if the beneficiary will be engaging in an occupation or profession for which the particular state or locality has set forth licensing requirements.

The remainder of paragraph (d) contains Service procedural requirements relating to the approval, validity, denial, revocation and appeal of a petition. A petition classifying a citizen of Mexico as a TN professional may be approved for up to one year. Full appeal rights through the Administrative Appeals Unit are available to the petitioner in the case of a petition denial.

Finally, paragraph (d) sets forth the procedures for maintenance of the annual numerical limitation of 5,500 petition approvals for citizens of Mexico seeking TN classification.

Paragraph (e) sets forth the procedures for the classification of a citizen of Canada as a TN professional under the NAFTA. The requirements of this paragraph are substantially similar to those previously contained in § 214.6 (c) and (d). References to the CFTA have [\*69208] been replaced with references to the NAFTA and the TC nonimmigrant classification has been replaced by the TN classification.

The documentary requirements at paragraph (e)(3)(ii) have been revised to more clearly state what is required to be included in the documentation provided to the TN applicant by the alien's United States employer or the alien's foreign employer, in the case of a Canadian citizen who is seeking entry in TN status to provide prearranged services to a United States entity. Specifically, the documentation must state the Appendix 1603.D.1 profession in which the applicant will be engaging and a description of his or her professional activities, including a brief summary of the daily job duties to be performed. As with the Mexican TN, educational credentials obtained outside of the United States, Canada, or Mexico shall be accompanied by an evaluation by a qualified credentials evaluator. Also, if state or local licensing requirements are in place for the professional activity in which the Canadian citizen will be engaging, evidence must be provided that those licensing requirements have been met prior to application for admission.

Paragraph (f) sets forth the procedures for admission of Canadian and Mexican citizens in TN classification. The Canadian citizen shall be required to remit the fee prescribed in 8 *CFR* 103.7 upon admission. That fee has been \$ 50.00 (U.S) since implementation of the CFTA and will not be raised at this time. The applicant will be given a Service fee receipt and a Form I-94 showing admission in the classification TN for the period requested up to one year. The Form I-94 shall bear the legend "multiple entry". (Additional requirements relating to issuance of Form I-94 are contained in § 235.1(f), discussed below.)

Citizens of Mexico seeking admission in TN classification are required to present a valid TN visa issued by a United States consular officer. The maintenance of visa requirements by parties to the Agreement is authorized in Annex 1603(D)(3) of the NAFTA. In addition to the visa requirement, the Mexican citizen shall present at the time of application for initial admission a copy of the employer's statement described in this section at paragraph (d)(2)(iii). Presentation of this statement is required to facilitate the inspection procedure.

An applicant for admission as a TN professional shall be treated as if seeking classification as a nonimmigrant pursuant to section 101(a)(15) of the Act and, therefore, the presumption of immigrant intent applicable through section 214(b) of the Act shall apply to that citizen of Canada or Mexico seeking such classification. At the time of application for entry, the citizen of Canada or Mexico will be subject to inspection to determine the applicability of section 214(b) of the Act to that applicant.

Paragraph (g) provides for the readmission to the United States of Canadian and Mexican citizens in TN status. Readmission procedures for Canadian citizens have not been amended. The citizen of Mexico who is in possession of a valid Form I-94 may be readmitted for the remainder of the time authorized provided that the original intended professional activities and employer(s) have not changed and should retain possession of that original Form I-94. If no longer in possession of a valid Form I-94 (e.g., a citizen of Mexico seeking readmission upon return from a business trip to Europe), the citizen of Mexico may be readmitted upon presentation of a valid TN visa and evidence of prior admission. That evidence of prior admission may include, but is not limited to, a Service fee receipt from a prior entry or an admission stamp in the applicant's passport. Upon readmission, a new I-94 shall be issued bearing the legend "multiple entry".

Paragraph (h) contains the procedures to be followed if the citizen of Mexico or Canada wishes to apply for an extension of his or her stay in TN status. A citizen of Mexico seeking an extension of stay in the United States in TN status shall be applied for on Form I-129 to the Northern Service Center. Documentary requirements include evidence that Department of Labor certification requirements continue to be met by the employer. Provision is included for consular notification should the applicant leave the United States during the pendency of the application. A petition extension and extension of the applicant's stay may be granted for up to one year.

A citizen of Canada may seek an extension of stay through the filing of Form I-129 to the Northern Service Center. No Department of Labor certification requirements apply to a Canadian citizen in TN status who is seeking to extend that status. Provision is made for port of entry notification should the applicant depart the United States during the pendency of the application. An extension may be granted for up to one year.

Additionally, a citizen of Canada is not precluded from departing the United States and applying for admission with documentation from a United States employer or foreign employer, in the case of a Canadian citizen who is seeking to provide prearranged services at a profession level to a United States entity, which specifies that the applicant will be employed in the United States for an additional period of time. The evidentiary requirements set forth in paragraph (e)(3) shall be met by the applicant and the fee prescribed in 8 *CFR* 103.7 shall be remitted upon admission.

At the present time, there is no specified upper limit on the number of years a citizen of Mexico or Canada may remain in the United States in TN classification, as there is with most of the other nonimmigrant classes contained within section 101(a)(15) of the Act. However, section 214(b) of the Act is applicable to citizens of Canada or Mexico who seek an extension of stay in TN status and applications for extension or readmission must be examined in light of

this statutory provision.

Paragraph (i) allows the Canadian or Mexican citizen to change or add employers while in the United States through the filing of a Form I-129 to the Northern Service Center. Also, the Canadian citizen may depart the United States and apply for reentry for the purpose of obtaining additional employment authorization with a new or an additional employer. Documentary requirements are prescribed in paragraph (e)(3)(ii) and the prescribed fee must be remitted upon admission.

Paragraph (j) provides for the admission of spouses and minor children who are accompanying or following to join TN professionals. They are to be accorded admission in TD (Trade Dependent) classification and are required to present a valid, unexpired nonimmigrant visa unless otherwise exempt under *8 CFR 212.1*. For purposes of clarification, those persons who are normally exempt from nonimmigrant visa requirements include citizens of Canada and residents (Landed Immigrants) of Canada having a common nationality with Canadian citizens (British Commonwealth citizens).

No fee is required for the admission of dependents in TD status and they are to be issued a Form I-94 bearing the legend "multiple entry". Spouses and minor children are not authorized to accept employment while they are in the United States in TD status. If a TD dependent wishes to be employed, he or she must independently seek change of status to an employment-authorized nonimmigrant classification. Dependents in TD status may attend [\*69209] school in the United States on a full-time basis, as such attendance is deemed to be incidental to their purpose for being in the United States, which is to accompany the TN alien.

Paragraph (k) provides for denial of TN classification of a citizen of Canada or Mexico if there is a labor dispute in progress at the place of current or intended employment. This provision is substantively identical to that which is applicable to the Canadian or Mexican L-1 applicant cited at *8 CFR 214.2(1)(18)* and discussed above.

Paragraph (l) provides for automatic conversion from TC to TN classification for Canadian citizen professionals in TC classification as of January 1, 1994, as well as automatic conversion from B-2 to TD classification for the spouses and unmarried minor children of such TC nonimmigrants as of the effective date of the NAFTA Implementation Act. In addition, beginning on January 1, 1994, TC principal aliens and their B-2 spouses and unmarried minor children will be readmitted in TN or TD classification respectively, without being required to submit additional paperwork or payment of the normal application fee for the remainder of the period authorized on their Form I-94. TC or B-2 spouses and minor children seeking to extend their stay beyond this period are required to comply with the normal filing requirements of paragraph (h), including submission of appropriate paperwork and the prescribed application fee. This paragraph also provides that any applications for extension of stay in TC or B-2 classification as the spouse of a TC nonimmigrant which are pending on January 1, 1994 will be treated as if they were for TN or TD classification respectively.

Paragraph (l) specifically makes unavailable these transitional benefits to Canadian professionals who were admitted in TC classification in order to engage in self-employment in a business or practice in this country, and to their B-2 spouses and/or children. Although such self-employment was never specifically addressed in the regulations promulgated by the Service in response to the CFTA, the NAFTA Implementation Act Statement of Administrative Action at page 178 clarifies that, "It should be noted that while there are many similarities between this NAFTA category and the categories relating to professionals set out in INA section 101(a)(15), a determination of admissibility under the NAFTA neither forecloses nor establishes eligibility for entry under such other categories. Further, Section D of Annex 1603 does not authorize a professional to establish a business or practice in the United States in which the professional will be self-employed." Consistent with the intent of the signatories of the CFTA and NAFTA, the interim regulation specifically precludes readmitting Canadian professionals who were previously admitted in TC classification from engaging in self-employment and from extending their stay in TC or TN (or in the case of spouses and/or children, B-2 or TD) nonimmigrant classification. Canadian citizens seeking to engage in trade or investment activities in this country under the NAFTA Implementation Act must do so pursuant to section 101(a)(15)(E) of the Act.

*235.1(d)*

A new paragraph (d)(8) has been added to provide for the denial of entry in E, L-1, or TN status of any citizen of Canada if the Secretary of Labor has certified to or otherwise informed the Commissioner that a strike or work stoppage of workers is occurring at the place of current or intended employment and the temporary entry of the applicant would affect adversely either settlement of the labor dispute or the employment of any person involved in the dispute. Additionally, the paragraph requires notification in writing to the applicant of the reason(s) for the refusal. Also, a designated representative of the applicant's home country government must be promptly notified in writing of the reasons for the refusal.

Additional instructions will be forthcoming from the Service regarding the appropriate methods and channels for notification of Party governments.

*8 CFR 235.1(f)*

Paragraph (f)(1) has been amended to include specific requirements regarding the completion of Form I-94 issued to a citizen of Canada or Mexico in TN status. Specifically, item 18 on the reverse of Form I-94 must be completed and the occupation stated must be contained within Appendix 1603.D.1 of Annex 1603 of the NAFTA. This requirement reflects the need to collect and maintain accurate statistics for reporting purposes to both the United States Congress and signatory governments.

Also, the name of the TN nonimmigrant's employer must be endorsed on both the Arrival and Departure portions of Form I-94 in order to comport with the requirements of section 274A of the Act.

*8 CFR 274a.12(b) (19) and (20)*

Paragraph (b)(19) is amended to include citizens of Mexico and Canada engaged in business activities at a professional level pursuant to Chapter 16 or the NAFTA to the classes of aliens authorized employment with a specific employer incident to status. Paragraph (b)(20) is amended to provide employment authorization to a citizen of Canada or Mexico in TN status in whose behalf an application for extension of stay has been timely filed.

The Service's implementation of this rule as an interim rule, with provisions for post-promulgation public comment, is based upon the "good cause" exceptions found at 5 *U.S.C.* 553 (b)(B) and (d)(3). The reasons and the necessity for immediate implementation of this interim rule without prior notice and comment are as follows: The NAFTA Implementation Act was signed by the President on December 8, 1993 and the NAFTA goes into force on January 1, 1994. There is a clear necessity for immediate implementation of this provision so that the admission to the United States of Canadian and Mexican citizen business persons pursuant to Chapter 16 of the NAFTA may be facilitated by this Service on the date of entry into force of the Agreement. Under these circumstances, providing a notice and comment period in advance of publication of this interim rule would have been impracticable and contrary to Congressional intent. It is imperative that this interim rule become effective on January 1, 1994 so that those persons who are entitled to the benefits of the NAFTA Implementation Act may apply accordingly.

In accordance with 5 *U.S.C.* 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This certification is made in light of the fact that the regulation substantially retains current standards for the admission of Canadians formerly provided for under the CFTA, and that, under this regulation, only 5,500 petitions may initially be approved annually in behalf of citizens of Mexico seeking classification as TN professionals. Additionally, it is anticipated that only a limited number of citizens of Mexico will seek classification as treaty traders and investors pursuant to this regulation. For the same reasons, this is not considered a "significant regulatory action" under Executive Order 12866. Further, this rule does not have Federalism implications warranting the [\*69210] preparation of a Federal Assessment in accordance with Executive Order 12612.

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and are cited under 8 *CFR* 299.5, Display of Control Numbers.

The additional instructions for Form I-129 are printed at the end of this regulation.

### **List of Subjects**

#### *8 CFR Part 103*

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

#### *8 CFR Part 212*

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

#### *8 CFR Part 214*

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

#### *8 CFR Part 235*

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

#### *8 CFR Part 274a*

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

### **PART 103-POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS**

1. The authority citation for part 103 continues to read as follows:

**Authority:** *5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.*

2. In § 103.1, paragraph (f)(2) (x) and (xxiii) are revised to read as follows:

#### **§ 103.1 -- Delegations of authority.**

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(x) Petitions for temporary workers or trainees and fiancées or fiancés of U.S. citizens under §§ 214.2 and 214.6 of this chapter;

\* \* \* \* \*

(xxiii) Revoking approval of certain petitions, as provided in §§ 214.2 and 214.6 of this chapter;

\* \* \* \* \*

3. In § 103.7, paragraph (b)(1) is amended by revising the entry "Request", the third time it is listed, to read as follows:

**§ 103.7 -- Fees.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

Request. For classification of a citizen of Canada to be engaged in business activities at a professional level pursuant to section 214(e) of the Act (Chapter 16 of the North American Free Trade Agreement)-\$ 50.00

\* \* \* \* \*

**PART 212-DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE**

4. The authority citation for part 212 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1225, 1226, 1228, 1252; 8 CFR part 2.

5. In § 212.1, paragraph (1) is revised to read as follows:

**§ 212.1 -- Documentary requirements for nonimmigrants.**

\* \* \* \* \*

(1) *Treaty traders and investors.* Notwithstanding any of the provisions of this part, an alien seeking admission as a treaty trader or investor under the provisions of Chapter 16 of the North American Free Trade Agreement (NAFTA) pursuant to section 101(a)(15)(E) of the Act, shall be in possession of a nonimmigrant visa issued by an American consular officer classifying the alien under that section.

\* \* \* \* \*

**PART 214-NONIMMIGRANT CLASSES**

6. The authority citation for part 214 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR part 2.

7. Section 214.2 is amended by:

a. Revising paragraphs (b)(1) and (b)(4);

b. Adding a new paragraph (e)(3);

c. Revising paragraph (l)(17) heading;

d. Revising paragraph (l)(17)(i); and by

e. Adding a new paragraph (l)(18), to read as follows:

**§ 214.2 -- Special requirements for admission, extension, and maintenance status.**

\* \* \* \* \*

(b) *Visitors-(1) General.* any B-1 visitor for business or B-2 visitor for pleasure may be admitted for not more than one year and may be granted extensions of temporary stay in increments of not more than six months each, except that alien members of a religious denomination coming temporarily and solely to do missionary work in behalf of a religious denomination may be granted extensions of not more than one year each, provided that such work does not involve the selling of articles or the solicitation or acceptance of donations. Those B-1 and B-2 visitors admitted pursuant to the waiver provided at § 212.1(e) of this chapter may be admitted to and stay on Guam for period not to exceed fifteen days and are not eligible for extensions of stay.

\* \* \* \* \*

(4) *Admission of aliens pursuant to the North American Free Trade Agreement (NAFTA).* A citizen of Canada or Mexico seeking temporary entry for purposes set forth in paragraph (b)(4)(i) of this section, who otherwise meets existing requirements under section 101(a)(15)(B) of the Act, including but not limited to requirements regarding the source of remuneration, shall be admitted upon presentation of proof of such citizenship in the case of Canadian applicants, and valid entry documents such as a passport and visa or Mexican Border Crossing Card (Form I-186 or I-586) in the case of Mexican applicants, a description of the purpose of entry, and evidence demonstrating that he or she is engaged in one of the occupations or professions set forth in paragraph (b)(4)(i) of this section. Existing requirements, with respect to Canada, are those requirements which were in effect at the time of entry into force of the CFTA and, with respect to Mexico, are those requirements which are in effect at the time of entry into force of the NAFTA. Additionally, nothing shall preclude the admission of a citizen of Mexico or Canada who meets the requirements of paragraph (b)(4)(ii) of this section.

(i) *Occupations and professions set forth in Appendix 1603.A.1 to Annex 1603 of the NAFTA.*-(A) *Research and design.* Technical scientific and statistical researchers conducting independent research or research for an enterprise located in the territory of another Party.

(B) *Growth, manufacture and production (I)* Harvester owner [\*69211] supervising a harvesting crew admitted under applicable law. (Applies only to harvesting of agricultural crops: Grain, fiber, fruit and vegetables.)

(2) *Purchasing and production management personnel* conducting commercial transactions for an enterprise located in the territory of another Party.

(C) *Marketing.* (I) Market researchers and analyst conducting independent research or analysis, or research or

analysis for an enterprise located in the territory of another Party.

(2) Trade fair and promotional personnel attending a trade convention.

(D) *Sales.* (1) Sales representatives and agents taking orders or negotiating contracts for goods or services for an enterprise located in the territory of another Party but not delivering goods or providing services.

(2) Buyers purchasing for an enterprise located in the territory of another Party.

(E) *Distribution.* (1) Transportation operators transporting goods or passengers to the United States from the territory of another Party or loading and transporting goods or passengers from the United States to the territory of another Party, with no unloading in the United States, to the territory of another Party. (These operators may make deliveries in the United States if all goods or passengers to be delivered were loaded in the territory of another Party. Furthermore, they may load from locations in the United States if all goods or passengers to be loaded will be delivered in the territory of another Party. Purely domestic service or solicitation, in competition with the United States operators, is not permitted.)

(2) Customs brokers performing brokerage duties associated with the export of goods from the United States to or through Canada.

(F) *After-sales service.* Installers, repair and maintenance personnel, and supervisors, possessing specialized knowledge essential to the seller's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale of commercial or industrial equipment or machinery, including computer software, purchased from an enterprise located outside the United States, during the life of the warranty or service agreement. (For the purposes of this provision, the commercial or industrial equipment or machinery, including computer software, must have been manufactured outside the United States.)

(G) *General service.* (1) Professionals engaging in a business activity at a professional level in a profession set out in Appendix 1603.D.1 to Annex 1603 of the NAFTA, but receiving no salary or other remuneration from a United States source (other than an expense allowance or other reimbursement for expenses incidental to the temporary stay) and otherwise satisfying the requirements of Section A to Annex 1063 of the NAFTA.

(2) Management and supervisory personnel engaging in commercial transactions for an enterprise located in the territory of another Party.

(3) Financial services personnel (insurers, bankers or investment brokers) engaging in commercial transactions for an enterprise located in the territory of another Party.

(4) Public relations and advertising personnel consulting with business associates, or attending or participating in conventions.

(5) Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions or conducting a tour that has begun in the territory of another Party. (The tour may begin in the United States; but must terminate in foreign territory, and a significant portion of the tour must be conducted in foreign territory. In such a case, an operator may enter the United States with an empty conveyance and a tour guide may enter on his or her own and join the conveyance.)

(6) Tour bus operators entering the United States:

(i) With a group of passengers on a bus tour that has begun in, and will return to, the territory of another Party.

(ii) To meet a group of passengers on a bus tour that will end, and the predominant portion of which will take place, in the territory of another Party.

(iii) With a group of passengers on a bus tour to be unloaded in the United States and returning with no passengers or reloading with the group for transportation to the territory of another Party.

(7) Translators or interpreters performing services as employees of an enterprise located in the territory of another Party.

(ii) Occupations and professions not listed in Appendix 1603.A.1 to Annex 1603 of the NAFTA. Nothing in this paragraph shall preclude a business person engaged in an occupation or profession other than those listed in Appendix 1603.A.1 to Annex 1603 of the NAFTA from temporary entry under section 101(a)(15)(B) of the Act, if such person otherwise meets the existing requirements for admission as prescribed by the Attorney General.

\* \* \* \* \*

(e) \* \* \*

(3) *Denial of treaty trader or investor status to citizens of Canada or Mexico in the case of certain labor disputes.* A citizen of Canada or Mexico may be denied E treaty trader or investor status as described in section 101(a)(15)(E) of the Act and section B of Annex 1603 of the NAFTA if:

(i) The Secretary of Labor certifies to or otherwise informs the Commissioner that a strike or other labor dispute involving a work stoppage of workers is in progress at the place where the alien is or intends to be employed; and

(ii) Temporary entry of that alien may affect adversely either:

(A) The settlement of any labor dispute that is in progress at the place or intended place of employment, or

(B) The employment of any person who is involved in such dispute.

\* \* \* \* \*

(1) \* \* \*

(17) *Filing of individual petitions and certifications under blanket petitions for citizens of Canada under the North American Free Trade Agreement (NAFTA).* (i) *Individual petitions.* Except as provided in paragraph (1)(2)(ii) of this section (filing of blanket petitions), a United States or foreign employer seeking to classify a citizen of Canada as an intracompany transferee may file an individual petition in duplicate on Form I-129 in conjunction with an application for admission of the citizen of Canada. Such filing may be made with an immigration officer at a Class A port of entry located on the United States-Canada land border or at a United States pre-clearance/pre-flight station in Canada. The petitioning employer need not appear, but Form I-129 must bear the authorized signature of the petitioner.

\* \* \* \* \*

(18) *Denial of intracompany transferee status to citizens of Canada or Mexico in the case of certain labor disputes.* (i) If the Secretary of Labor certifies to or otherwise informs the Commissioner that a strike or other labor dispute involving a work stoppage of workers is in progress where the beneficiary is to be employed, and the temporary entry of the beneficiary may affect adversely the settlement of such labor dispute or the employment of any person who is involved in such dispute, a petition to classify a citizen of Mexico or Canada as an L-1 intracompany transferee may be denied. If a petition has already been approved, but the alien has not yet entered the United States, or [\*69212] 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 commended 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.

\* \* \* \* \*

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: n1

**Appendix 1603.D.1 (Annotated)**

-Accountant-Baccalaureate or Licenciatura Degree; or C.P.A., C.A., C.G.A., or C.M.A.

n1 A business person seeking temporary employment under this Appendix may also perform training functions relating to the profession, including conducting seminars.

-Architect-Baccalaureate or Licenciatura Degree; or state/provincial license. n2

n2 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.

-Computer Systems Analyst-Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma n3 or Post Secondary Certificate n4 and three years' experience.

n3 "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.

n4"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. [\*69213]
- Scientific Technician/Technologist n5 -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.

n5 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.

- Social Worker-Baccalaureate or Licenciatura Degree.
- Sylviculturist (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) n6 -Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years

experience.

n6 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.

- 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 [\*69214] 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 [\*69215] Western hemisphere, no passport shall be required; however, an applicant for admission must establish Canadian citizenship.

(ii) *Documentation demonstrating engagement in business activities at a professional level and demonstrating professional qualifications.* 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 the United States to engage in business activities for a United States employer(s) or entity(ies) at a professional level, and that the applicant meets the criteria to perform at such a professional level. This documentation may be in the form of a letter from the prospective employer(s) in the United States or from the foreign employer, in the case of a Canadian citizen seeking entry to provide prearranged services to a United States entity, and may be required to be supported by licenses, diplomas, degrees, certificates, or membership in a professional organization. Degrees, diplomas, or certificates received by the applicant from an educational institution not located within Canada, Mexico, or the United States must be accompanied by an evaluation by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials. The documentation shall fully affirm:

(A) The Appendix 1603.D.1 profession of the applicant;

(B) A description of the professional activities, including a brief summary of daily job duties, if appropriate, which the applicant will engage in for the United States employer/entity;

(C) The anticipated length of stay;

(D) The educational qualifications or appropriate credentials which demonstrate that the Canadian citizen has professional level status;

(E) The arrangements for remuneration for services to be rendered; and

(F) If required by state or local law, that the Canadian citizen complies with all applicable laws and/or licensing requirements for the professional activity in which they will be engaged.

(f) *Procedures for admission-(1) Canadian citizens.* A Canadian citizen who qualifies for admission under this section shall be provided confirming documentation (Service Form I-94) and shall be admitted under the classification symbol TN for a period not to exceed one year. Form I-94 shall bear the legend "multiple entry". The fee prescribed under § 103.7(b) of this chapter shall be remitted upon admission to the United States pursuant to the terms and conditions of the NAFTA. Upon remittance of the prescribed fee, the Canadian citizen applicant shall be provided a Service receipt (Form G-211, Form G-711, or Form I-797).

(2) *Mexican citizens.* The Mexican citizen beneficiary of an approved Form I-129 granting classification as a TN professional shall be admitted to the United States for the validity period of the approved petition upon presentation of a valid TN visa issued by a United States consular officer and a copy of the United States employer's statement as described in paragraph (d)(2)(iii) of this section. The Mexican citizen shall be provided Form I-94 bearing the legend "multiple entry".

(g) *Readmission-(1) Canadian citizens.* A Canadian citizen in this classification may be readmitted to the United States for the remainder of the period authorized on Form I-94, without presentation of the letter or supporting documentation described in paragraph (e)(3) of this section, and without remittance of the prescribed fee, provided that the original intended professional activities and employer(s) have not changed. If the Canadian citizen seeking readmission to the United States is no longer in possession of a valid, unexpired Form I-94, and the period of initial admission has not lapsed, he or she shall present alternate evidence in order to be readmitted in TN status. This alternate evidence may include, but is not limited to, a Service fee receipt for admission as a TN or a previously issued admission stamp as TN in a passport, and a confirming letter from the United States employer(s). A new Form I-94 shall be issued at the time of readmission bearing the legend "multiple entry".

(2) *Mexican citizens.* A Mexican citizen in this classification may be readmitted for the remainder of the period of time authorized on Form I-94 provided that the original intended professional activities and employer(s) have not changed. If the Mexican citizen seeking readmission to the United States is no longer in possession of a valid, unexpired Form I-94, he or she may be readmitted upon presentation of a valid TN visa and evidence of a previous admission. A new Form I-94 shall be issued at the time of readmission bearing the legend "multiple entry".

(h) *Extension of stay-(1) Mexican citizen.* The United States employer shall apply for extension of the Mexican citizen's stay in the United States by filing Form I-129 with the Northern Service Center. The applicant must also request a petition extension. The request for extension must be accompanied by either a new or a photocopy of the prior certification on Form ETA 9029, in the case of a registered nurse, or Form ETA 9035, in all other cases, that the petitioner continues to have on file with the Department of Labor for the period of time requested. The dates of extension shall be the same for the petition and the beneficiary's extension of stay. The beneficiary must be physically present in the United States at the time of the filing of the extension of stay. Even though the requests to extend the petition and the alien's stay are combined on the petition, the director shall make a separate determination on each. If the citizen of Mexico is required to leave the United States for business or personal reasons during the pendency of the extension request, the petitioner may request the director to cable notification of the approval of the petition to the consular office abroad where the beneficiary will apply for a visa. An extension of stay may be authorized for up to one year. There is no specific limit on the total period of time a citizen of Mexico may remain in TN status.

(2) *Canadian citizen-(i) Filing at the service center.* The United States employer of a Canadian citizen in TN status or United States entity, in the case of a Canadian citizen in TN status who has a foreign employer, may request an extension of stay by filing Form I-129 with the prescribed fee, with the Northern Service Center. The beneficiary must be physically present in the United States at the time of the filing of the extension of stay. If the alien is required to leave the United States for business or personal reasons while the extension request is pending, the petitioner may request the director to cable notification of approval of the application to the port of entry where the Canadian citizen will apply for admission to the United States. An extension of stay may be authorized for up to one year. There is no specific limit on the total period of time a citizen of Canada may remain in TN status.

(ii) *Readmission at the border.* Nothing in paragraph (h)(2)(i) of this section shall preclude a citizen of Canada who has previously been in the United States in TN status from applying for admission for a period of time which extends beyond the date of his or her original term of admission at any United States port of entry. The application for admission shall be supported by a new letter from the United States employer or the foreign employer, in the case of a Canadian citizen who is providing prearranged services to a United States entity, which meets the requirements of paragraph [\*69216] (e)(3)(ii) of this section. The fee prescribed under § 103.7(b) of this chapter shall be remitted upon admission to the United States pursuant to the terms and conditions of the NAFTA.

(i) *Request for change or addition of United States employer(s)-(1) Mexican citizen.* A citizen of Mexico admitted under this paragraph who seeks to change or add a United States employer must have the new employer file a Form I-129 petition with appropriate supporting documentation, including a letter from the new employer describing the services to be performed, the time needed to render such services, and the terms for remuneration for services and evidence of required filing with the Secretary of Labor. Employment with a different or with an additional employer is not authorized prior to Service approval of the petition.

(2) *Canadian citizen-(i) Filing at the service center.* A citizen of Canada admitted under this paragraph who seeks to change or add a United States employer during this period of admission must have the new employer file a Form I-129 petition with appropriate supporting documentation, including a letter from the new employer describing the services to be performed, the time needed to render such services, and the terms for remuneration for services. Employment with a different or with an additional employer is not authorized prior to Service approval of the petition.

(ii) *Readmission at the border.* Nothing in paragraph (i)(2)(i) of this section precludes a citizen of Canada from applying for readmission to the United States for the purpose of presenting documentation from a different or additional United States or foreign employer. Such documentation shall meet the requirements prescribed in paragraph (e)(3)(ii) of this section. The fee prescribed under § 103.7(b) of this chapter shall be remitted upon admission to the United States pursuant to the terms and conditions of the NAFTA.

(3) No action shall be required on the part of a Canadian or Mexican citizen who is transferred to another location by the United States employer to perform the same services. Such an acceptable transfer would be to a branch or office of the employer. In the case of a transfer to a separately incorporated subsidiary or affiliate, the requirements of paragraphs (i) (1) and (2) of this section would apply.

(j) *Spouse and unmarried minor children accompanying or following to join.* (1) The spouse of unmarried minor child of a citizen of Canada or Mexico admitted in TN nonimmigrant status shall be required to present a valid, unexpired nonimmigrant TD visa unless otherwise exempt under § 212.1 of this chapter.

(2) The spouse and dependent minor children shall be issued confirming documentation (Form I-94) bearing the legend "multiple entry". There shall be no fee required for admission of the spouse and dependent minor children.

(3) The spouse and dependent minor children shall not accept employment in the United States unless otherwise authorized under the Act.

(k) *Effect of a strike.* If the Secretary of Labor certifies to or otherwise informs the Commissioner that a strike or other labor dispute involving a work stoppage of workers is in progress, and the temporary entry of a citizen of Mexico or Canada in TN nonimmigrant status may affect adversely the settlement of any labor dispute or the employment of any person who is involved in such dispute:

(1) The United States may refuse to issue an immigration document authorizing entry or employment to such alien.

(2) A Form I-129 seeking to classify a citizen of Mexico as a TN nonimmigrant may be denied. If a petition has already been approved, but the alien has not yet entered the United States, or has entered the United States but not yet commenced employment, the approval of the petition may be suspended.

(3) If the alien has already commenced employment in the United States 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, or whether the Service has been otherwise informed that such a strike or labor dispute is in progress, 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:

(i) 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 TN nonimmigrants;

(ii) 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 a work stoppage of workers; and

(iii) Although participation by a TN 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.

(4) 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 (k)(1) 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, suspend an approved petition, or deny entry to an applicant for TN status.

(1) *Transition for Canadian Citizen Professionals in TC classification and their B-2 spouses and/or unmarried minor children-(1) Canadian citizen professionals in TC Classification-(i) General.* Canadian citizen professionals in TC classification as of the effective date of the NAFTA Implementation Act (January 1, 1994) will automatically be deemed to be in valid TN classification. Such persons may be readmitted to the United States in TN classification for the remainder of the period authorized on their Form I-94, without presentation of the letter or supporting documentation described in paragraph (e)(3) of this section, and without remittance of the prescribed fee, provided that the original intended professional activities and employer(s) have not changed. Properly filed applications for extension of stay in TC classification which are pending on January 1, 1994 will be deemed to be, and adjudicated as if they were applications for extension to stay in TN classification.

(ii) *Procedure for Canadian citizens admitted in TC classification in possession of Form I-94 indicating admission in TC classification.* At the time of readmission, such professionals shall be required to surrender their old Form I-94 indicating admission in TC classification. Upon surrender of the old Form I-94, such professional will be issued a new Form I-94 bearing the legend "multiple entry" and indicating that he or she has been readmitted in TN classification.

(iii) *Procedure for Canadian citizen admitted in TC classification who are no longer in possession of Form I-94 indicating admission in TC classification.* If the Canadian citizen seeking readmission to the United States is no longer in possession of an unexpired Form I-94, and the period of initial admission has not lapsed, he or she shall present alternate evidence described in paragraph (g)(1) of this [\*69217] section in order to be readmitted in TN status. A Canadian professional seeking to extend his or her stay beyond the period indicated on the new Form I-94 shall be required to comply with the requirements of paragraph (h)(2) of this section, including remittance of the fee prescribed under § 103.7 of this chapter.

(iv) *Nonapplicability of this section to self-employed professionals in TC nonimmigrant classification.* The provisions in paragraphs (1)(1) (i), (ii), and (iii) of this section shall not apply to professionals in TC nonimmigrant classification who are self-employed in this country on January 1, 1994. Effective January 1, 1994, such professionals are not authorized to engage in self-employment in this country, and may not be admitted in TN or readmitted in TC classification.

(2) *Spouses and/or unmarried minor children of Canadian citizen professionals in TC classification-(i) General.* Effective January 1, 1994, the nonimmigrant classification of a spouse and/or unmarried minor child of a Canadian citizen professional in TC classification will automatically be converted from B-2 to TD nonimmigrant classification. Effective January 1, 1994, the spouse and/or unmarried minor child of a Canadian citizen professional whose TC status has been automatically converted to TN, or the spouse and/or unmarried minor child of such professional whose status has been changed to TN pursuant to paragraph (1) of this section, who is seeking admission or readmission to this country, may be readmitted in TD classification for the remainder of the period authorized on their Form I-94, without

presentation of the letter or supporting documentation described in paragraph (e)(3) of this section, and without remittance of the prescribed fee, provided that the original intended professional activities and employer(s) of the Canadian citizen professional have not changed. Properly filed applications for extension of stay in B-2 classification as the spouse and/or unmarried minor children of a Canadian citizen professional in TC classification which are pending on January 1, 1994 will be deemed to be, and adjudicated as if they were applications for extension of stay in TD classification.

(ii) *Procedure for spouses and/or unmarried minor children of Canadian citizens admitted in TC classification who are in possession of Form I-94 indicating admission in B-2 classification.* Upon surrender of the Form I-94 indicating that the alien has been admitted as the B-2 spouse or unmarried minor child of a TC alien valid for "multiple entry," such alien shall be issued a new Form I-94 indicating that the alien has been readmitted in TD classification. The new Form I-94 shall bear the legend "multiple entry."

(iii) *Procedure for spouses and/or unmarried minor children of Canadian citizens admitted in TC classification who are no longer in possession of Form I-94 indicating admission in B-2 classification.* If the Canadian citizen seeking readmission to the United States is no longer in possession of an unexpired Form I-94, and the period of initial admission has not lapsed, he or she shall present alternate evidence described in paragraph (g)(1) of this section in order to be admitted in TN status. Spouses and/or children of Canadian citizen professionals seeking to extend their stay beyond the period indicated on the new Form I-94 shall be required to comply with the requirements of paragraph (h)(2) of this section, including remittance of the fee prescribed under § 103.7 of this chapter.

(iv) *Nonapplicability of this section to spouses and/or unmarried minor children of self-employed professionals admitted in TC nonimmigrant classification.* Paragraphs (l)(2) (i), (ii), and (iii) of this section shall not apply to the spouses and/or unmarried minor children of Canadian citizen professionals in TC nonimmigrant classification who are self-employed in this country on January 1, 1994. Effective January 1, 1994, such persons are not eligible for TD classification.

## **PART 235-INSPECTION OF PERSONS APPLYING FOR ADMISSION**

9. The authority citation for part 235 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, 1252.

10. Section 235.1 is amended by adding a new paragraph (d)(8), and by revising paragraph (f)(1) introductory text, to read as follows:

### **§ 235.1 -- Scope of examination.**

\* \* \* \* \*

(d) \* \* \*

(8) Any citizen of Canada or Mexico seeking to enter the United States as a principal alien E-1 or E-2, or as an L-1 or TN, for the purpose of employment at a site where the Secretary of Labor has certified to or otherwise informed the Commissioner that there is a strike or other labor dispute involving a work stoppage of workers in progress, and the temporary entry of that citizen of Canada or Mexico may affect adversely either the settlement of any such labor dispute or the employment of any person who is involved in any such dispute, may be refused entry in the classification sought. The applicant shall be advised in writing of the reason(s) for the refusal. A designated representative of the government of Canada or Mexico shall be promptly notified in writing of the reason(s) for the refusal of entry.

\* \* \* \* \*

(f) *Arrival/Departure Record, Form I-94-(1) Nonimmigrants.* Each nonimmigrant alien except as indicated below, who is admitted to the United States shall be issued a completely executed Form I-94 which must be endorsed to show: date and place of admission, period of admission, and nonimmigrant classification. A nonimmigrant alien who will be making frequent entries into the United States over its land borders may be issued a Form I-94 which is valid for any number of entries during the validity of the form. In the case of a nonimmigrant alien admitted as a TN under the NAFTA, the specific occupation of such alien as set forth in Appendix 1603.D.1 of the NAFTA shall be recorded in item number 18 on the reverse side of the arrival portion of Form I-94, and the name of the employer shall be notated on the reverse side of both the arrival and departure portions of Form I-94. The departure portion Form I-94 shall bear the legend "multiple entry". A Form I-94 is not required by: \* \* \*

\* \* \* \* \*

**PART 274a-CONTROL OF EMPLOYMENT OF ALIENS**

11. The authority citation for part 274a continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

12. In § 274a.12, paragraphs (b) (19) and (20) are revised to read as follows:

**§ 274a.12 -- Classes of aliens authorized to accept employment.**

\* \* \* \* \*

(b) \* \* \*

(19) A nonimmigrant pursuant to section 214(e) of the Act. An alien in this status must be engaged in business activities at a professional level in accordance with the provisions of Chapter 16 of the North American Free Trade Agreement (NAFTA); or

(20) A nonimmigrant alien within the class of aliens described in paragraphs (b)(2), (b)(5), (b)(8), (b)(9), (b)(10), (b)(11), (b)(12), (b)(13), (b)(14), (b)(16), and (b)(19) of this section whose status has expired but who has filed a timely application for an extension of such stay pursuant to §§ 214.2 or 214.6 of this chapter. These aliens are authorized to continue employment with the same [\*69218] employer for a period not to exceed 240 days beginning on the date of the expiration of the authorized period of stay. Such authorization shall be subject to any conditions and limitations noted on the initial authorization. However, if the district director or service center director adjudicates the application prior to the expiration of this 240 day period and denies the application for extension of stay, the employment authorization under this paragraph shall automatically terminate upon notification of the denial decision.

\* \* \* \* \*

Dated: December 23, 1993.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

**Note:** This appendix will not appear in the Code of Federal Regulations.

**Appendix to the Preamble-Additional Instructions for Form I-129.****U.S. Department of Justice**

Immigration and Naturalization Service, OMB No. 1115-0168 Additional Instructions for Form I-129

Temporary Entry Under the North American Free Trade Agreement

The North American Free Trade Agreement (NAFTA) entered into force on January 1, 1994. Chapter 16, *Temporary Entry*, of the Agreement exclusively covers four nonimmigrant classifications:

- (1) B-1, Visitor for Business;
- (2) E-1/E-2, Treaty Trader and Investor;
- (3) L-1, Intracompany Transferee; and
- (4) TN, Business Professional.

This form is for an employer to petition for initial classification, change of status, or extension of stay of a Mexican or Canadian citizen as an L-1; for an employer to request an extension of stay or change of status of a Mexican or Canadian citizen to the E-1 or E-2 classification; for the employer to request an extension of stay or change of status of a Canadian citizen to the NAFTA Professional classification (TN) or the change/addition of employers for a Canadian TN; and for an employer to petition for classification of a Mexican citizen as a NAFTA Professional (TN).

Regular instructions for Form I-129 shall be followed to petition for L classification and E-1/E-2 classification. The following additional instructions are provided to file for a TN.

**Filing for a Canadian TN**

No Form I-129 is required for Canadian citizens applying for admission to the U.S. in TN status. Form I-129 is used by an employer to request an extension of stay for a Canadian to TN, a change of status for a Canadian to TN classification, or the change/addition of employers for a Canadian TN.

On Form I-129, Part 2, Item 1, insert the classification symbol TN-1.

A U.S. employer/entity must file the Form I-129 with the following:

- (1) a statement of the activity listed in Appendix 1603.D.1 (see the back of this form) in which the beneficiary will be engaging and a full description of the nature of the duties the beneficiary will be performing, the anticipated length of stay, and the arrangements for remuneration;
- (2) evidence that the beneficiary meets the educational and/or alternative credentials for the activity listed in Appendix 1603.D.1;
- (3) evidence of Canadian citizenship; and
- (4) evidence that all licensure requirements, where applicable to the activity, have been satisfied.

**Filing for a Mexican TN**

Form I-129 is required for Mexican citizens applying for initial TN classification, extension of TN stay,

change/addition of employers and change of classification to TN.

On Form I-129, Part 2, Item 1, insert the classification symbol TN-2.

A U.S. employer must file the petition with the following:

(1) a statement of the activity listed in Appendix 1603.D.1 (see the back of this form) in which the beneficiary will be engaging, a full description of the nature of the duties the beneficiary will be performing, the anticipated length of stay, and the arrangements for remuneration;

(2) evidence that the beneficiary meets the educational and/or alternative credentials for the activity listed in Appendix 1603.D.1;

(3) evidence of Mexican citizenship;

(4) evidence that all licensure requirements where applicable to the activity, have been satisfied; and

(5) a certification from the Secretary of Labor that the petitioner has filed the appropriate labor condition application or labor attestation for the specified activity.

#### When To File

File Form I-129 as soon as possible, but no more than 4 months before the proposed employment will begin or the extension of stay is required. If you do not submit Form I-129 at least 45 days before the employment will begin, processing and subsequent visa issuance may not be completed before the alien's services are required or previous employment authorization ends.

#### Where To File

When filing for a Mexican or Canadian TN, Form I-129 shall be filed with the Director of the Northern Service Center. In all other instances, Form I-129 shall be filed with the appropriate Service center per the instructions to Form I-129.

#### Fee

See general instructions for Form I-129.

#### **Listing of Professional Occupations in Appendix 1603.D.1 of North American Free Trade Agreement**

(The minimum educational or alternative credentials requirements for each profession are found at 8 *CFR* 214.6(c)).

Accountant

Architect

Computer Systems Analyst

Disaster relief insurance claims adjuster (claims adjuster employed by an insurance company located in the territory of a Party, or an independent claims adjuster)

Economist

Engineer

Forester

Graphic designer

Hotel manager

Industrial designer

Interior designer

Land surveyor

Landscape architect

Lawyer (including Notary in the province of Quebec)

Librarian

Management consultant

Mathematician (including statistician)

Range manager/Range conservationist

Research assistant (working in a post-secondary educational institution)

Scientific technician/technologist

Social worker

Sylviculturist (including forestry specialist)

Technical publications writer

Urban planner (including geographer)

Vocational counselor

Medical/Allied Professionals

Dentist

Dietitian

Medical laboratory technologist (Canada)/medical technologist (Mexico and the United States)

Nutritionist

Occupational therapist

Pharmacist

Physician (teaching or research only)

Physiotherapist/physical therapist

Psychologist

Recreational therapist

Registered nurse [\*69219]

Veterinarian

SCIENTIST

Agriculturist (agronomist)

Animal breeder

Animal scientist

Apiculturist

Astronomer

Biochemist

Biologist

Chemist

Dairy scientist

Entomologist

Epidemiologist

Geneticist

Geochemist

Geologist

Geophysicist (including oceanographer in Mexico and the United States)

Horticulturist

Meteorologist

Pharmacologist

Physicist (including Oceanographer in Canada)

Plant Breeder

Poultry scientist

Soil scientist

Zoologist

TEACHER

College

Seminary

University

For information regarding qualifications for the positions, additions or subtractions from Appendix 1603.D.1, and related information, you should contact your local Immigration and Naturalization Service office.

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