

Rose Carson Kaplan Choi & White LLP

ATTORNEYS AT LAW

The North American Free Trade Agreement ("NAFTA") provides several special considerations for nonimmigrant visa holders of Canadian and Mexican nationality. One of these advantages is the TN visa, available for specific categories of workers. The TN visa is of particular advantage to Canadian Nationals, who can apply for the visa directly at what is designated as a "Class A" port of entry. In addition, there is no limit on the number of years an individual can remain in TN status, as long as they maintain "nonimmigrant intent" – the intent to return to their home country at the end of their authorized stay in the United States.

Pursuant to the provisions of Section D of -Annex 1603 of NAFTA, several categories of professional workers can temporarily enter the United States to engage in business activities. Like the H-1B visa, the TN visa is available to professionals who seek to enter the United States to engage in professional business activities with a specific employer. In order to be classified as a TN professional under NAFTA, the individual applicant is required to possess at least a Bachelor's degree or other appropriate credentials (as provided for in Annex 1603) for the profession in question. Unlike the H-1B visa, however, the type of professionals who can qualify for TN status is strictly limited to those specifically provided for in the treaty itself. TN status is normally given for a period of up to one year and may be extended on a yearly basis.

LIST OF PROFESSIONALS ELIGIBLE FOR TN STATUS:

- Accountant
- Architect
- Computer systems analyst
- Disaster relief ins. personnel
- Economist
- Engineer
- Forester
- Graphic Designer
- Hotel Manager
- Industrial Designer
- Interior Designer
- Land Surveyor
- Landscape Architect
- Lawyer
- Librarian
- Management Consultant
- Mathematician
- Medical/Allied professionals
- Range Manager
- Research Assistant (in post-sec. educ. inst.)
- Scientific Technician
- Scientist
- Social worker
- Sylviculturist;
- Teacher (college, University, seminary)
- Technical Publications Writer
- Urban Planner
- Vocational counselor

A copy of Section D of -Annex 1603 of NAFTA is attached to this memorandum for your reference. This document sets forth the basic education and / or experience required for each of the TN professions listed above.

APPLICATION PROCEDURES FOR CITIZENS OF CANADA

For citizens of Canada, NAFTA provides for expedited handling of TN visa applications. The application is made at a Class-A port of entry or at a U. S. pre-flight inspection station. A visa stamp is not required or issued. Processing times may vary, depending on the port of entry, but usually the application is approved in less than two hours (as opposed to the six to eight weeks necessary for H-1B approval).

The Canadian applicant must provide the following documentation:

- Proof of Canadian citizenship;
- Information regarding the proposed U.S. employer;
- Information describing the professional business activity the applicant will be engaged in;
- The anticipated length of stay;
- Proof of the educational qualifications and/or credentials which demonstrate that the applicant is a professional;
- Evidence that the applicant is in compliance with any applicable state laws and/or licensing requirements for the professional business activity; and
- Information regarding the applicant's compensation for services provided in the United States.

Upon approval of the TN application, the individual will be issued a "multiple entry" Form I-94 evidencing work authorization of up to one year. Any dependents traveling with the applicant will be granted "TD" status. TD status does not authorize employment in the United States.

APPLICATION PROCEDURES FOR CITIZENS OF MEXICO

The TN application procedure for Mexicans is very similar to the H-1B procedure (so much so, in fact, that the TN visa is rarely used for citizens of Mexico). A nonimmigrant visa petition is filed with the Northern Service Center of the Citizenship and Immigration Service together with the following documentation:

- A labor condition application certified by Department of Labor (as with H-1B petitions);
- Information regarding the proposed U.S. employer;
- Information describing the professional business activity the applicant will be engaged in;
- Proof of the educational qualifications and/or credentials which demonstrate that the applicant is a professional;
- The anticipated length of stay;

Upon approval, the INS will issue an approval notice, good for one year, which will allow the applicant to apply for a TN visa. Once the TN visa is granted, the applicant can enter the United States and will be given a "multiple entry" Form I-94 evidencing work authorization of up to one year. Any dependents traveling with the applicant will be granted "TD" status. TD status does not authorize employment in the United States.

NOTES ON IMMIGRANT AND NONIMMIGRANT INTENT FOR NAFTA PROFESSIONALS

Practice Tip 1: What is meant by “nonimmigrant visa”?

A nonimmigrant visa entitles a foreign national to enter the United States for a limited duration pursuant to the terms of admission as defined by the given visa class. In the TN context, this means that the individual applicant should only evidence an intent to remain in the United States for limited duration and purpose as controlled by the terms of the TN visa application.

Practice Tip 2: “Dual Intent” not allowed for TN visa holders:

An individual in TN visa status cannot have both nonimmigrant and immigrant intent. Therefore, we recommend that a TN visa holder who wishes to pursue U.S. Permanent Residence while in the United States (for example, through the Alien Employment Certification process) change to a nonimmigrant visa status that recognizes dual immigrant and nonimmigrant intent – such as H-1B or L-1 status.

Please note that this memorandum provides general information and is not intended to be a substitute for specific legal advice regarding an individual matter. As the immigration laws are constantly changing, we strongly encourage you to work closely with legal counsel when pursuing any employment-based immigration benefits. If we can be of further assistance to you or your employees regarding this or any other area of Corporate Immigration Law, please contact our office directly at (650) 617-8888.