

the notice of intent to withdraw approval that it may be assisted or represented by counsel of its choice qualified under part 292 of this chapter, at no expense to the Government, in preparation of its answer or in connection with the interview.

(d) *Allegations admitted or no answer filed.* If the school or school system admits all of the allegations in the notice of intent to withdraw approval, or if the school or school system fails to file an answer within the 30-day period, the district director shall withdraw the approval previously granted and he/she shall notify the designated school official of the decision. No appeal shall lie from the district director's decision if all allegations are admitted or no answer is filed within the 30-day period.

(e) *Allegations denied.* If the school or school system denies the allegations in the notice of intent to withdraw approval, then the school or school system shall, in its answer, provide all information or evidence on which the answer is based.

(f) *Interview requested.* (1) If in its answer to the notice of intent to withdraw approval the school or school system requests an interview, the school or school system shall be given notice of the date set for the interview.

(2) A summary of the information provided by the school or school system at the interview shall be prepared and included in the record. In the discretion of the district director, the interview may be recorded.

(g) *Decision.* The decision of the district director shall be in writing and shall include a discussion of the evidence and findings as to withdrawal. The decision shall contain an order either withdrawing approval or granting continued approval. The written decision shall be served upon the school or school system, together with the notice of the right to appeal pursuant to part 103 of this chapter.

(h) *Appeal.* Any appeal shall be taken within 15 days after the service of the written decision. The reasons for the appeal shall be stated in the notice of appeal, Form I-290B, and supported by a statement or brief specifically set-

ting forth the grounds for contesting the withdrawal of the approval.

[37 FR 17463, Aug. 29, 1972, as amended at 48 FR 14592, Apr. 5, 1983; 48 FR 19867, May 3, 1983; 48 FR 22131, May 17, 1983; 49 FR 41015, Oct. 19, 1984; 50 FR 9991, Mar. 13, 1985; 54 FR 19544, May 8, 1989; 55 FR 41988, Oct. 17, 1990]

**§214.5 Libyan and third country nationals acting on behalf of Libyan entities.**

(a) Notwithstanding any other provision of this title, the nonimmigrant status of any Libyan national, or of any other foreign national acting on behalf of a Libyan entity, who is engaging in aviation maintenance, flight operations, or nuclear-related studies or training is terminated.

(b) Notwithstanding any other provision of this chapter, the following benefits will not be available to any Libyan national or any other foreign national acting on behalf of a Libyan entity where the purpose is to engage in, or seek to obtain aviation maintenance, flight operations or nuclear-related studies or training:

- (1) Application for school transfer.
- (2) Application for extension of stay.
- (3) Employment authorization or practical training.
- (4) Request for reinstatement of student status.
- (5) Application for change of non-immigrant status.

(Secs. 103, 212, 214, 248; 8 U.S.C. 1103, 1182, 1184, 1258)

[48 FR 10297, Mar. 3, 1983]

**§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 in a profession set forth in Appendix 1603.D.1 of the NAFTA.

*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, in substance, self-employed. A professional will be deemed to be self-employed if he or she will be rendering services to a corporation or entity of which the professional is the sole or controlling shareholder or owner.

*Temporary entry*, as defined in the NAFTA, means entry without the intent to establish permanent residence. The alien must satisfy the inspecting immigration officer that the proposed stay is temporary. A temporary period has a reasonable, finite end that does not equate to permanent residence. In order to establish that the alien's entry will be temporary, the alien must demonstrate to the satisfaction of the inspecting immigration officer that his or her work assignment in the United States will end at a predictable time and that he or she will depart upon completion of the assignment.

(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:<sup>1</sup>

APPENDIX 1603.D.1 (ANNOTATED)

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

<sup>1</sup>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.<sup>2</sup>
- Computer Systems Analyst—Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma<sup>3</sup> or Post Secondary Certificate<sup>4</sup> and three years' experience.
- 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.

<sup>2</sup>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.

<sup>3</sup>"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.

<sup>4</sup>"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.

**Immigration and Naturalization Service, Justice**

**§ 214.6**

- 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.
  - Scientific Technician/Technologist<sup>5</sup>—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.
  - 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)<sup>6</sup>—Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience.
  - 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.

<sup>5</sup> 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.

<sup>6</sup> 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.

§214.6

8 CFR Ch. I (1-1-01 Edition)

- 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 in-

stitution 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 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 petitioner'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 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 pres-

entation 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 (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 par-

ticipation 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—(1) 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 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.

[58 FR 69212, Dec. 30, 1993, as amended at 63 FR 1335, Jan. 9, 1998]

**§ 214.7 What is habitual residence in the territories and possessions of the United States and what are the consequences thereof?**

(a) *Definitions.* As used in this section, the term:

(1) *Compacts* means the agreements of free association between the United States and the governments of the Republic of the Marshall Islands, the Federated States of Micronesia, and Palau, approved by Public Law 99-239 with respect to the governments of the Republic of the Marshall Islands and the Federated States of Micronesia, and by Public Law 99-658, with respect to Palau.

(2) *Freely associated states (FAS)* means the following parts of the former Trust Territories of the Pacific Islands, namely, the Republic of the Marshall Islands, the Federated States of Micronesia, and Palau.

(3) *Territories and possessions of the United States* means all territories and possessions of the United States to which the Act applies, including those commonwealths of the United States that are not States. It does not include American Samoa and the Commonwealth of the Northern Mariana Islands, as long as the Act does not apply to them.

(4)(i) *Habitual resident* means a citizen of the FAS who has been admitted to a territory or possession of the United States (other than American Samoa or the Commonwealth of the Northern Mariana Islands, as long as the Act is not applicable to them) pursuant to

section 141(a) of the Compacts and who occupies in such territory or possession a habitual residence as that term is defined in section 461 of the Compacts, namely a place of general abode or a principal, actual dwelling place of a continuing or lasting nature. The term “habitual resident” does not apply to:

(A) A person who has established a continuing residence in a territory or possession of the United States, but whose cumulative physical presence in the United States amounts to less than 365 days; or

(B) A dependent of a resident representative described in section 152 of the Compacts; or

(C) A person who entered the United States for the purpose of full-time studies as long as such person maintains that status.

(ii) Since the term “habitual” resident requires that the person have entered the United States pursuant to section 141(a) of the Compacts, the term does not apply to FAS citizens whose presence in the territories or possessions is based on an authority other than section 141(a), such as:

(A) Members of the Armed Forces of the United States described in 8 CFR § 235.1(c);

(B) Persons lawfully admitted for permanent residence in the United States; or

(C) Persons having nonimmigrant status whose entry into the United States is based on provisions of the Compacts or the Act other than section 141(a) of the Compacts.

(5) *Dependent* means a citizen of the FAS, as defined in section 141(a) of the Compacts, who:

(i) Is a habitual resident;

(ii) Resides with a principal habitual resident;

(iii) Relies for financial support on that principal habitual resident; and

(iv) Is either the parent, spouse, or unmarried child under the age of 21 of the principal habitual resident or the parent or child of the spouse of the principal habitual resident.

(6) *Principal habitual resident* means a habitual resident with whom one or more dependents reside and on whom dependent(s) rely for financial support.

(7) *Self-supporting* means: