



## Latest Trends in the TN NAFTA Visa Process

By Murali Bashyam

### Background

NAFTA is the North American Free Trade Agreement. It creates special economic and trade relationships for the United States, Canada and Mexico. The nonimmigrant NAFTA Professional (TN) visa allows citizens of Canada and Mexico to work in the United States in certain positions listed under NAFTA.



This article will explore the latest trends in the NAFTA TN visa process, including changes in initial period of time allowed for TN professionals, and procedural and practical changes that have made the TN process more challenging for TN professionals over the last few years.

### 1 Year to 3 Years

TN professionals were initially allowed entry to the United States for a period of only 1 year. This meant that workers would have to apply for extensions of their status annually, which can be costly and burdensome. In late 2008, USCIS changed this policy and allowed for an initial admission period of 3 years.

Of course, TN professionals and their employers applauded this move. They would not have worry about doing a TN extension every year, which would save both the employer and employee time and money. But did this positive policy change always result in favorable 3 year initial TN adjudications? Unfortunately, it did not.

In order to get a 3 year period of entry, employers have to explicitly request it in the TN application. If they do not, the employee is generally issued a 1 or 2-year TN . In some cases, even if the application does request a 3-year period of entry, port-of-entry officers will approve it for a shorter period, depending on how long the TN employee has already worked in the U.S. Employers and employees should anticipate these issues, and expect some unpredictability in the TN approval process.

### Ties to Canada

TN status is what is referred to as a 'single-intent' status. This means that the TN professional is supposed to only work temporarily in the United States, and must have the ultimate intention of returning to his/her home country.

Unlike the H-1B visa, which carries a limit of 6 years in the United States, the TN has no such legal limit. In the past, TN professionals could indefinitely extend their TN status and the USCIS would rarely, if

ever, question their intention to return to their home country. In fact, we have represented some TN workers who have spent over 10 years in the U.S.

With the change to 3 year periods of entry, however, the way the USCIS handles this issue has changed. Now, USCIS and port-of-entry officers routinely ask for concrete evidence of a TN worker's ties to his/her home country. This is especially true if the worker has already spent a considerable amount of time in TN status.

TN professionals should be prepared to document their ties to Canada/Mexico. These 'ties' can include evidence of home or property ownership, apartment lease, bank accounts, benefit plans or family ties. It is especially important to be proactive about this issue when filing TN extension requests with the USCIS. In the past year, we have seen the USCIS issue more Requests for Evidence on the 'ties to home country' issue than in the past.

Be proactive in getting these documents together, and be prepared to present them!

### Management Consultants

The Management Consultant position has come under increased scrutiny in recent years. Because the duties of a management consultant are fairly broad and can be subject to interpretation, the USCIS and port-of-entry officers have felt that the position itself has been abused by employers who want to bring in TN workers who don't fit clearly into other NAFTA positions.

The generic duties of a Management Consultant, as defined by the Department of Labor, are as follows:

Conduct organizational studies and evaluations, design systems and procedures, conduct work simplifications and measurement studies, and prepare operations and procedures manuals to assist management in operating more efficiently and effectively.

Employees who present TN applications for Management Consultant positions should make sure the work they will be performing in the United States is directly related to assisting management operate the company - it or some function within it - more efficiently. In addition, the TN support letter should explain how the duties to be performed by TN worker clearly fit within the Management Consultant category. If it does not, it is very likely the TN applicant will encounter problems at the port-of-entry or with USCIS.

### Conclusion

Although TN processing has become more complicated and unpredictable in recent years, it still remains the best avenue for Canadians and Mexican nationals to work in the United States. If you are thinking of applying for a TN visa, talk to an experienced professional first. They can make sure you qualify for TN status, and also help prepare your TN application to ensure that you have the best chance for success.

To learn more about current trends in the NAFTA TN Visa process and to get an overview of the requirements and conditions that professionals of Canada or Mexico must meet to work in the U.S. under this visa classification, sign up for our upcoming web seminar on NAFTA TN Visa Basics.

**Webinar:** *NAFTA TN Visa Basics*

**Date:** Wednesday, March 16, 2011

**Time:** 12:30 PM - 1:00 PM EDT

**Free registration:** <https://www2.gotomeeting.com/register/305450610>

*Murali Bashyam is Founder and Managing Partner at Bashyam Spiro LLP ([www.bashyamspiro.com](http://www.bashyamspiro.com)), a Raleigh, North Carolina law firm that focuses on Immigration and Nationality Law. Follow Bashyam Spiro LLP on [Facebook](#) and [Twitter](#).*

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