

TN Status Expanded from One Year to Three Years

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U.S. Citizenship and Immigration Services (“USCIS”) is expanding the validity period of Trade-NAFTA (“TN”) status from one year to three years. TN status comes from the North American Free Trade Agreement (“NAFTA”) among the United States, Canada and Mexico. TN status is available for professional workers from Canada or Mexico to work temporarily in the United States. TN status is available to professional workers from Canada or Mexico. Three years is the same period of time that USCIS currently may grant to H-1B specialty occupation workers. The rule cleared the Office of Management and Budget on September 10, 2008, and publication is expected soon.

TN status is available to Canadian and Mexican citizens with a minimum of a bachelor’s degree, or appropriate professional credentials, who work in professions listed in the NAFTA agreement, and specified under U.S. Department of Homeland Security regulations. Eligible TN professions include, but are not limited to, accountants, engineers, attorneys, pharmacists, scientists, teachers, management consultants and technical writers.

Procedures for Canadians to seek TN status differ from procedures for Mexicans. Canadians can submit applications at certain border posts along the U.S.- Canada or U.S.-Mexico border or certain airports in Canada, and do not require a visa for TN status, while Mexicans first must obtain a TN visa to enter the United States in TN status.

In addition to expanding the initial period of TN validity, the change also will allow eligible TN professionals to be granted an extension of stay in increments of up to three years, as opposed to one year at a time. The law does not impose a maximum period of stay in TN status, and TN professionals thus may seek multiple re-admissions or extensions, provided their intended professional activity continues and they remain otherwise eligible, including maintaining sufficient ties and equities outside the United States. The changes also would apply to spouses and unmarried, minor children of TN non-immigrants, in their corresponding non-immigrant classifications as TN dependents under “TD” designation.

What This Means for Employers

The rule, once implemented, will ease administrative burdens and costs on TN non-immigrants and will benefit U.S. employers by increasing the period of time beneficiaries are allowed to

remain in the United States under TN status, thus providing more workforce continuity for business planning.

Employers should note that, while the rule change will allow TN status for up to three years, three years might not be granted in every instance. For management consultant positions in particular, it is likely that heightened scrutiny may be applied, requiring evidence regarding the length of time the TN professional's services are required in the United States.

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