

Employer Immigration Alert

► This Alert will highlight a stay increase for Mexican and Canadian TN Professionals.

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► USCIS INCREASES PERIOD OF STAY FOR MEXICAN AND CANADIAN TN PROFESSIONALS FROM ONE TO THREE YEARS

The U.S. Department of Homeland Security, United States Citizenship and Immigration Services (“USCIS”) published a final rule in The Federal Register on October 16, 2008 increasing the duration of stay for TN professional workers from Canada and Mexico from one to three years.

This represents a significant change to the TN program, which is authorized under the North American Free Trade Agreement (“NAFTA”). Prior to this change, citizens of Canada and Mexico were admitted the United States in TN status for one-year, with authorization to extend status in one-year increments.

TN professionals from Canada and Mexico, as well as their spouses and children who are granted “TD” status, are now permitted to enter the United States under an initial authorization period of up to three years, with the option of extending status in three-year increments. As before, there is no annual cap on the number of TN professionals that may be admitted to the United States.

Most notably, Canadians and Mexicans who already are working in the United States under an approved, unexpired TN authorization may apply at a designated DHS port-of-entry to request a new three-year period of admission.



USCIS has stated that the decision to change the TN validity period from one to three years was, in part, to provide consistency with other nonimmigrant worker categories, such as the H-1B. Other reasons for the change include the desire to provide a more stable and predictable workforce for TN employers, and to reduce the cost and inconvenience to TN workers. Additionally, USCIS has stated that making the TN category more attractive to citizens of Canada and Mexico may deter them from applying for H-1B status, thereby leaving the annual quota of 65,000 H-1B visas available to citizens of other countries.

TN status is available to citizens of Canada or Mexico who seek temporary admission to the United States to work in a professional capacity for a U.S. employer. In general, the TN regulations require a foreign national to work in an occupation that requires at least a bachelor’s degree or other appropriate credentials. The sixty-three specific occupations that qualify for TN status are listed in Appendix 1603.D.1 to Annex 1603 of the NAFTA and are reproduced in the federal regulations found at 8 C.F.R. Section 214.6(c). Examples of TN authorized professions include accountant, engineer, teacher, pharmacist and management consultant.

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The Authors



Michael E. Marszalkowski is Special Counsel and Chair of the firm's Immigration Practice Group. He advises clients on matters involving business immigration matters, immigrant visas, labor certification, physician waivers, national interest cases, and family unification. He offers counseling to professionals in the information technology industry, physicians and medical professionals, multi national executives, professional athletes and coaches and entertainers.



Jill A. Apa is an Immigration Associate in the firm's Labor & Employment Department. Ms. Apa has written numerous legal articles and edited treatise chapters on various immigration issues for local and national publications, including AILA, the *Buffalo Law Journal*, *The Daily Record*, and *The Homeland Security Deskbook* and *The Immigration Law and Procedure Desk Edition*. Additionally, Ms. Apa serves each week as a moderator on an immigration law internet chat hosted by Lawyers.com and provides frequent guidance on the Lawyers.com Immigration Community Message Board.

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Damon & Morey
ATTORNEYS AT LAW LLP

Publications Department
298 Main Street, 1000 Cathedral Place
Buffalo, New York 14202