28)Upon the first entry of a citizen of Canada with a new petition as an L-1, a $500 fraud prevention and detection fee must be collected (where the fee has not been previously collected, or where there is a new petition involving a change of employer). That is, the $500 fee will only be collected one time for a petition involving a particular beneficiary and employer relationship. When the fraud prevention and collection fee is collected, the remarks block on the back of Form I-94 should be endorsed with the cash register receipt number and the legend "Fraud Fee Collected."

(B) Citizens of Mexico. A citizen of Mexico must apply for an L visa at an American consulate. At the port-of-entry, the applicant must present a valid Mexican passport with an L-1 visa.

(3) Spouses and Dependent Children. Spouses and dependent children of intracompany transferees may accompany or follow to join the L-1 principal if they otherwise meet the general immigration requirements for temporary entry. L-2 is the designated classification for both spouse and dependent children of intracompany transferees. There is no requirement that the spouse and dependent children be citizens of Canada or Mexico. L-2 dependents who are citizens of Canada are not required to obtain an L-2 visa but may seek visa issuance if desired. L-2 dependents who are citizens of Mexico or other countries generally are required to seek visa issuance. L-2s may not work in the United States. L-2s may attend school while in the United States incident to their temporary stay.

(f) TN Classification as a Professional.

(1) General.

(A) Background. The NAFTA professional is unique to the North American Free Trade Agreement (the NAFTA). The classification is not found in general immigration provisions in section 101(a)(15) of the INA; rather, it is included in section 214(e) of the INA. Under NAFTA, a Canadian or Mexican citizen who seeks temporary entry into the U.S. as a professional may be admitted to the U.S. under the provisions of the NAFTA as a TN (for Trade NAFTA). The TN is limited to Canadian or Mexican professionals employed on a professional level. A professional is defined as a business person seeking entry to engage in a business activity at a professional level in a profession set forth in Appendix 1603.D.1 to Annex 1603, if the business person otherwise qualifies under existing, general immigration requirements for temporary entry into the U.S. [See Appendix 15-4 of this manual for Annex 1603, Appendix 1603.D.1.] [For regulations relating to NAFTA TN classification, refer to 8 CFR 214.6.].

The NAFTA professional is modeled on the professional category in the predecessor trade pact, the United States-Canada Free-Trade Agreement (CFTA), which was in effect from January 1, 1989 until the entry into force of the NAFTA on January 1, 1994. The provisions differ only slightly for Canadian citizen applicants and Mexican citizen applicants. Following implementation of the NAFTA, there was an annual numerical limitation of 5,500 on the number of Mexican citizens entering the U.S. as TN professionals. In order to administer the cap, a Form I-129 petition and a labor condition application were required. The numerical limitation and petition requirement were eliminated effective January 1, 2004.

As with the CFTA, admission as a TN under section 214(e) of the INA does not imply that the citizen of Canada or Mexico would otherwise qualify as a professional under section 101(a)(15)(H)(i)(b) or section 203(b)(3) of the INA. Note too that Section D of Annex 1603 does not authorize a professional to establish a business or practice in the U.S. in which the professional will be self-employed. Section D of Annex 1603 is limited to the entry of a citizen of a Party country seeking to render professional-level services for an entity in another Party country.

Self-employment also clearly conflicts with the intent of the NAFTA Implementation Act and its accompanying Statement of Administrative Action, which states, at page 178, "Section D of

Annex 1603 does not authorize a professional to establish a business or practice in the U.S. in which the professional will be self-employed." In this regard, Section B of Annex 1603, which deals with "traders and investors," establishes the appropriate category of temporary entry for a citizen of a Party country seeking to develop and direct investment operations in another Party country. Canadian or Mexican citizens seeking to engage in self-employment in trade or investment activities in the U.S., therefore, must seek classification under section 101(a)(15)(E) of the INA.

Although the issue of self-employment was never specifically addressed under the regulations promulgated by the INS pursuant to the CFTA Implementation Act, the bar on establishment of a business or practice in which the professional will be self-employed is consistent with the intent of the U.S. and Canada in entering into the CFTA. Since entry into NAFTA was not intended to substantively change the treatment of professionals, this explicit bar merely clarifies existing law.

Note that the bar on establishment of a business or practice in which the Canadian or Mexican citizen will be self-employed is in no way intended to preclude a Canadian or Mexican citizen who is self-employed abroad from seeking entry to the U.S. pursuant to a pre-arranged agreement with an enterprise owned by a person or entity other than him/herself located in the U.S. On the other hand, a Canadian or Mexican citizen is precluded from entering this country in TN classification for the purpose of rendering pre-arranged services for a U.S. corporation or entity of which he or she is the sole or controlling shareholder or owner or over which he or she holds de facto control.

(B) Pre-arranged Professional Services. In order to obtain "TN" classification, a business person, including one who is self-employed, must be seeking entry to render pre-arranged professional services to an individual or an enterprise. If the business activities are to be rendered to an individual or an enterprise, the enterprise must be substantively separate from the business person seeking entry. Moreover, the business activities must not include establishment of a business or practice or any other type of activity in which the business person will be self-employed in the United States.

As used above, to constitute pre-arranged professional services, there must exist a formal arrangement to render professional service to an individual or an enterprise in the United States. The formal arrangement may be through an employee-employer relationship or through a signed contract between the business person or the business person's employer and an individual or an enterprise in the United States.

(C) Enterprise for Which the Professional Activities are to be Performed in the United States. The enterprise in the United States for which the business activities are to be performed can take any legal form (as defined in Article 201 of the NAFTA), that is, "any entity entirely constituted or organized under applicable law, whether or not for profit, and whether privately-owned or government-owned, including any corporation, trust partnership, sole proprietorship, joint venture or other association."

(D) Substantively Separate from the Business Person Seeking Entry as NAFTA Professional. A business person is ineligible for classification as a NAFTA Professional if the enterprise in the United States offering a contract or employment to the business person seeking entry is a sole proprietorship operated by that business person. Moreover, even if the receiving enterprise is legally distinct from the business person, such as a corporation having a separate legal existence, entry as a NAFTA Professional must be refused if the receiving enterprise is substantially controlled by that business person.

(E) Substantial Control. Whether the business person "substantially controls" the U.S. enterprise will depend on the specific facts of each case. The following factors, among others, are relevant in determining what constitutes substantial control:

• whether the applicant has established the receiving enterprise;
• whether, as a matter of fact, the applicant has sole or primary control of the U.S. enterprise (regardless of the applicant's actual percentage of share ownership);
• whether the applicant is the sole or primary owner of the business; or
• whether the applicant is the sole or primary recipient of income of the business.

(F) Establishment of a Business in Which the Professional Will be Self-Employed in the United States. The following factors, among others are relevant in determining whether the business person will be self-employed in the United States:

• incorporation of a company in which the business person will be self-employed;
• initiation of communications (e.g., by direct mail or by advertising) for the purpose of obtaining employment or entering into contracts for an enterprise in the United States; or
• responding to advertisements for the purpose of obtaining employment or entering into contracts.

On the other hand, the following activities do not constitute the establishment of a business in which the business person will be self-employed in the United States:

• responding to unsolicited inquiries about service(s) which the professional may be able to perform; or
• establishing business premises from which to deliver pre-arranged service to clients.

(Paragraph (f)(1) revised IN98-06)

(2) Appendix 1603.D.1 to Annex 1603 of the NAFTA. Under NAFTA, an applicant seeking classification as a TN must demonstrate business activity at a professional level in one of the professions or occupations listed in Appendix 1603.D.1 to Annex 1603. Appendix 1603.D.1 (which replaces Schedule 2 to Annex 1502.1 of the CFTA) is set forth at 8 CFR 214.6(c). A Baccalaureate (bachelor's) or Licenciatura degree is the minimum requirement for these professions unless an alternative credential is otherwise specified. In the case of a Canadian or Mexican citizen whose occupation does not appear on Appendix 1603.D.1 or who does not meet the transparent criteria specified, nothing precludes the filing of a petition for classification under another existing nonimmigrant classification.

A footnote to Appendix 1603.D.1 allows for temporary entry to perform training functions relating to any of the cited occupations or profession, including conducting seminars. However, these training functions must be conducted in the manner of prearranged activities performed for a U.S. entity and the subject matter to be proffered must be at a professional level. The training function does not allow for the entry of a business person to conduct seminars which do not constitute the performance of prearranged activities for a U.S. entity.

The terms **"state/provincial license"** and **"state/provincial/federal license"** means 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.

A **"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. A **"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.

The following notes relate to NAFTA TN admissions in specific occupations:

(A) A business person in the category of **"Scientific Technician/Technologist"** must possess: (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. A scientific technician/technologist does not generally have a baccalaureate degree. The following principles will be used to evaluate the admissibility of scientific technician/technologist applicants.

(i) Individuals for whom scientific technicians/technologists wish to provide direct support must qualify as a professional in their own right in one of the following fields: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology, or physics.

(ii) A general offer of employment by such a professional is not sufficient, by itself, to qualify for admission as a Scientific Technician or Technologist (ST/T). The offer must demonstrate that the work of the ST/T will be inter-related with that of the supervisory professional. That is, the work of the ST/T must be managed, coordinated and reviewed by the professional supervisor, and must also provide input to the supervisory professional's own work.

(iii) The ST/T's theoretical knowledge should generally have been acquired through the successful completion of at least two years of training in a relevant educational program. Such training may be documented by presentation of a diploma, a certificate, or a transcript accompanied by evidence of relevant work experience.

(iv) U.S. authorities will rely on the Department of Labor's Occupational Outlook Handbook to establish whether proposed job functions are consistent with those of a scientific or engineering technician or technologist. ST/Ts should not be admitted to perform job functions that are primarily associated with other job titles.

(v) Not admissible as ST/Ts are persons intending to do work that is normally done by the construction trades (welders, boiler makers, carpenters, electricians, etc.), even where these trades are specialized to a particular industry (e.g., aircraft, power distribution, etc.)

(B) A business person in the category of **"Medical Laboratory Technologist** (Canada)/**Medical Technologist** (Mexico and the United States)" 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.

(C) Foreign medical school graduates seeking temporary entry in the category of **"Physician (teaching or research only)"** may not engage in direct patient care. Patient care that is incidental teaching and/or research is permissible. Patient care is incidental when it is casually incurred in conjunction with the physician's teaching or research. To determine if the patient care will incidental, factors such as the amount of time spent in patient care relative to teaching and/or research, whether the physician receives compensation for such services, whether the salary offer is so substantial in teaching and/or research that direct patient care is unlikely, or whether the physician will have a regular patient load, should be considered by the officer.

(D) Registered Nurses. Registered nurses must demonstrate eligibility by providing a provincial or state license or Licenciatura degree. However, in order to be admitted, the registered nurse must present a permanent state license, a temporary state license, or other temporary authorization to work as a registered nurse, issued by the state nursing board in the state of intended employment. Admission of nurses should not be limited to the expiration date of either document. In addition, registered nurses must present a certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS) or an equivalent credentialing organization. [See 8 CFR 212.15 and AFM Ch. 30.12.] The Secretary of Homeland Security will continue to exercise his discretion to waive the certificate requirement up to and including July 25, 2005, for Canadian and Mexican health nurses, who, before September 23, 2003, were employed as "trade NAFTA" (TN) or "trade Canada" (TC) nonimmigrant health care workers and held valid licenses from a United States jurisdiction. Until that

date, DHS will admit registered nurses and approve applications for extension of stay and/or change of status subject to the following conditions (Revised by CBP 3-04):

- The admission, extension of stay, or change of status may not be for a period longer than 1 year, even if the relevant provision of 8 CFR 214.2 would ordinarily permit the alien's admission for a longer period;
- The alien must obtain the requisite health care worker certification within 1 year of the date of admission, or the date of the decision to extend the alien's stay or change status; and
- Any subsequent petition or application to extend the period of authorized stay or change the alien's status must include proof that the alien has obtained the health care worker certification if the extension of stay or change of status is sought for the primary purpose of the alien performing labor in an affected health care occupation.

(E) **Sylviculturists and foresters** plan and supervise the growing, protection, and harvesting of trees. **Range managers** manage, improve, and protect rangelands to maximize their use without damaging the environment. A baccalaureate or Licenciatura degree in forestry or a related field or a state/provincial license is the minimum entry requirement for these occupations.

(F) **Disaster relief insurance claims adjusters** must submit documentation that there is a declared disaster event by the President of the United States, or a state statute, or a local ordinance, or an event at a site which has been assigned a catastrophe serial number by the Property Claims Service of the American Insurance Services Group, or, if property damage exceeds $5 million and represents a significant number of claims, by an association of insurance companies representing at least 15 percent of the property casualty market in the U.S.

(G) **Management consultants** provide services which are directed toward improving the managerial, operating, and economic performance of public and private entities by analyzing and resolving strategic and operating problems and thereby improving the entity's goals, objectives, policies, strategies, administration, organization, and operation. Management consultants are usually independent contractors or employees of consulting firms under contracts to U.S. entities. They may be salaried employees of the U.S. entities to which they are providing services only when they are not assuming existing positions or filling newly created positions. As a salaried employee of such a U.S. entity, they may only fill supernumerary temporary positions. On the other hand, if the employer is a U.S. management consulting firm, the employee may be coming temporarily to fill a permanent position. Canadian or Mexican citizens may qualify as management consultants by holding a Baccalaureate or Licenciatura degree or by having five years of experience in a specialty related to the consulting agreement.

(H) The **computer systems analyst** category does not include programmers. A systems analyst is an information specialist who analyzes how data processing can be applied to the specific needs of users and who designs and implements computer-based processing systems. Systems analysts study the organization itself to identify its information needs and design computer systems which meet those needs. Although the systems analyst will do some programming, the TN category has not been expanded to include programmers.

(I) **Hotel Managers** must possess a Baccalaureate or Licenciatura degree in hotel/restaurant management. A post secondary diploma in hotel/restaurant management plus 3 years of experience in the field will also qualify.

(J) **Animal and Plant Breeders** breed animals and plants to improve their economic and aesthetic characteristics. Both occupations require a Baccalaureate or Licenciatura degree.

(3) Qualifications. The NAFTA professional must meet the following general criteria:

- Be a citizen of a NAFTA country (Canada or Mexico).
- Be engaged in professional-level activities for an entity in the United States. Only those

professional-level activities listed in Appendix 1603.D.1 to Annex 1603 are covered under the NAFTA. The applicant must establish that the professional-level services will be rendered for an entity in the United States. The NAFTA professional category is not appropriate for Canadian or Mexican citizens seeking to set up a business in the United States in which he or she will be self-employed.

• Be qualified as a professional. The applicant must establish qualifications to engage in one of the activities listed in Appendix 1603.D.1. The Minimum Education Requirements and Alternative Credentials are listed in the Appendix for each professional-level activity. The regulation requires that degrees, diplomas, or certificates received by the TN applicant from an educational institution outside of the United States, Canada, or Mexico must be accompanied by an evaluation by a reliable credentials evaluation service that specializes in such evaluations. Experiential evidence should be in the form of letters from former employers. If the applicant was formerly self-employed, business records should be submitted attesting to that self-employment.

• Meet applicable license requirements. To practice a licensed profession, Canadian and Mexican entrants must meet all applicable requirements of the state in which they intend to practice.

Note: In certain circumstances, although a profession may generally require licensing, there may be duties within the occupation that do not require licensing. For example, an architect must be licensed to sign architectural plans, etc. but not all professional-level duties of an architect require licensure (an architect can work on development of plans but be precluded from signing the plans).

Similarly, a dentist requires a license in the U.S. to practice dentistry but if a Canadian citizen is coming to the U.S. as a TN to give a seminar on dentistry, no U.S. license would be necessary. The Canadian may establish qualifications as a dentist by showing a provincial license or a D.D.S., D.M.D., Doctor en Odontologia en Cirugia Dental.

This is analogous to the lawyer who seeks admission as a TN to offer professional-level legal advice about Canadian law but who is not going to practice before any state bar in the U.S.--this Canadian citizen would need only to establish qualification as a lawyer--a J.D. or provincial bar membership could suffice.

• Be in the United States temporarily. The NAFTA professional must establish that the intent of entry is not for permanent residence.

(Revised IN99-28)

(4) Application Process.

(A) Citizens of Canada. A citizen of Canada may apply for entry to the U.S. as a NAFTA professional at U.S. Class A ports-of-entry, airports handling international flights, or at pre-clearance/pre-flight stations in Canada. The applicant must submit documentary proof that he or she is a citizen of Canada. Such proof may consist of a Canadian passport, citizenship card, or birth certificate together with photo identification. No visa is required for entry, but the applicant may seek visa issuance if desired.

An application for entry as a TN professional is an application for admission. It must be made, in person, to an immigration officer at the same time the individual is applying for admission to the U.S. There is no written application for entry as a TN professional. No prior petition, labor certification, or prior approval may be required for Canadian citizens applying for admission to the U.S. in TN status. Advance adjudication of a TN applicant prior to the actual application

for admission is not appropriate. Prior approval procedures are not permissible under Annex 1603.D.2(a) of the NAFTA. The applicant must be interviewed regarding his or her qualifications for the profession. Documentation from the prospective employer in the U.S., or from the foreign employer, must include the following:

- A statement (in the form of a letter or contract) of the professional-level activity listed in Appendix 1603.D.1, in which the applicant will be engaging and a full description of the nature of the job duties the applicant will be performing, the anticipated length of stay, and the arrangements for remuneration; and
- Evidence that the applicant meets the educational qualifications or alternative credentials for the activity listed in Appendix 1603.D.1.

(B) Citizens of Mexico. A citizen of Mexico may apply for entry to the U.S. as a NAFTA professional at U.S. Class A land border ports-of-entry, airports handling international flights, or at a pre-clearance/pre-flight station in Canada. However, a citizen of Mexico must be in possession of a TN nonimmigrant visa issued by an U.S. consulate and present a valid Mexican passport.

Upon application for a visa at a U.S. consulate or embassy, a citizen of Mexico must present the following:

- Evidence of Mexican citizenship;
- Evidence of an offer of employment to include a statement of the activity listed in Appendix 1603.D.1 in which the applicant will be engaging, a full description of the nature of the duties the applicant will be performing, the anticipated length of stay, and the arrangements for remuneration; and
- Evidence that the applicant meets the educational and/or alternative credentials for the activity listed in Appendix 1603.D.1.

(5) Terms of Initial Admission. (Revised 7/28/06; CBP 20-06)

A. Canadians. A Canadian citizen who qualifies for admission under the NAFTA in the TN classification must remit the fee prescribed in 8 CFR 103.7 (presently $50.00 U.S.) upon admission. Issue the applicant a fee and a multiple entry Form I-94 showing admission in the classification TN for the period requested not to exceed 1 year. Annotate the occupation in block #18 and the employer name and address in block #26 on the back of the arrival portion of the Form I-94.

B. Mexicans. A Mexican citizen seeking admission in TN classification is required to present a valid TN visa issued by a U.S. consulate. Admit a Mexican TN for the period requested, not to exceed 1 year, and issue a multiple entry Form I-94 showing admission classification as TN. Annotate the occupation in block #18 on the back of the arrival portion of the I-94. (Note: Only citizens of Canada pay the TN fee at the port-of-entry. This fee is not charged to Mexican citizens when applying for TN classification at the port-of-entry because fees are charged for issuance of the TN nonimmigrant visa.)

At the time of application for admission, the citizen of Canada or Mexico will be subject to inspection to determine the applicability of section 214(b) of the INA (presumption of immigrant intent) to the applicant.

(6) Procedures for Readmission. A citizen of Canada or Mexico who is eligible for TN classification may be readmitted to the U.S. for the remainder of the period authorized on his or her Form I-94, without presentation of the letter or supporting documentation described above, provided that the original intended business activities and employer(s) have not changed. If the applicant is no longer in possession of a valid, unexpired Form I-94, a citizen of Canada must present substantiating evidence. Substantiating evidence may be in the form of a fee receipt for admission as a TN, a previously issued TN admission stamp in a passport, and a confirming letter from the U.S. employer(s). A Mexican

citizen may be readmitted upon presentation of a valid TN visa and evidence of prior admission, which may include, but is not limited to, an INS fee receipt from a prior entry or an admission stamp in the applicant's passport. Upon readmission, issue a new multiple entry Form I-94.

(7) Extension of Stay.

(A) Form I-129 Application Process. A citizen of Canada or Mexico admitted pursuant to NAFTA may seek an extension of stay as a TN through the filing of a Form I-129 by the U.S. employer or U.S. entity (in the case of a TN who has a foreign employer) with the Nebraska Service Center. No Department of Labor certification requirements apply to an alien in TN status who is seeking to extend that status as the Form I-129 is considered an application for extension of stay rather than a petition in this case. The applicant must be in the U.S. at the time of filing the extension request. Provision is made for port-of-entry or consular notification should the applicant depart the U.S. during the pendency of the application. An extension may be granted for up to 1 year.

(B) Departure and Return. A citizen of Canada or Mexico is not precluded from departing the U.S. and applying for admission with documentation from a U.S. employer (or foreign employer, in the case of an alien who is seeking to provide prearranged services at a professional level to a U.S. entity) which specifies that the applicant will be employed in the U.S. for an additional period of time. The evidentiary requirements outlined above in paragraph (f)(4) must be met by the applicant and, in the case of a Canadian citizen, the prescribed fee must be remitted upon admission. In the case of a Mexican citizen, the passport and visa requirements also apply.

(C) Limitations. At the present time, there is no specified upper limit on the number of years a citizen of Canada or Mexico may remain in the U.S. in TN classification, as there is with most of the other nonimmigrant classifications. However, section 214(b) of the Act is applicable to citizens of Canada or Mexico who seek an extension of stay in TN status and applications for extension or readmission must be examined in light of this statutory provision.

Except as limited by section 248 of the Act, a citizen of Canada or Mexico who is currently in the U.S. in another valid classification is not precluded from requesting a change of status to TN. If such applicant is in the U.S. as an H-1 or L-1, he or she may be changed to TN status if otherwise eligible, without regard to the maximum time limits for those classifications. A Canadian J nonimmigrant who is subject to the 2-year foreign residence requirement may not change to TN classification, but may leave the U.S. and seek readmission as a TN.

(8) Request for Change/Additions of U.S. Employers. A Canadian or Mexican citizen may change or add employers while in the U.S. through the filing of Form I-129 at the Nebraska Service Center. All documentary requirements pertaining to a citizen of Canada or a citizen of Mexico outlined above must be met. Employment with a different or with an additional employer is not authorized prior to approval of the application.

Alternatively, the Canadian citizen may depart the U.S. and apply for reentry for the purpose of obtaining additional employment authorization with a new or additional employer. Documentary requirements outlined above in paragraph (f)(4)(A) must be met and the prescribed fee must be remitted upon readmission.

No action is required by a Canadian or Mexican citizen who is transferred to another location by the U.S. employer to perform the same services. An example of such an acceptable transfer would be to a branch or office of the employer. If the transfer is to a separately incorporated subsidiary or affiliate, Form I-129 must be filed.

(9) Spouse and Unmarried Minor Children. The spouse and unmarried minor children, who are accompanying or following to join a TN professional, if otherwise admissible, are to be accorded TD (Trade Dependent) classification. These aliens are required to present a valid, unexpired nonimmigrant visa unless otherwise visa-exempt under 8 CFR 212.1. There is no requirement that the

TD dependent be a citizen of Canada or Mexico.

No fee is required for admission of dependents in TD status (except the fee for the Form I-94) and they are to be issued multiple entry Forms I-94.
A TD spouse or child is not authorized to accept employment while in the U.S. in such status. Dependents in TD status may attend school in the U.S. on a full-time basis as such attendance is deemed incidental to status.

(10) Denial. In the event a Canadian citizen applying for admission pursuant to NAFTA cannot demonstrate to the admitting officer that he or she satisfies the requirements for admission pursuant to the NAFTA, Appendix 1603.D.1, he/she should normally be offered the opportunity to withdraw his/her application for admission. If the inspector believes that the alien is inadmissible under section 212(a)(7)(A) (intending immigrant) or section 212(a)(6)(C) of the Act (seeking admission by fraud or willful and material misrepresentation) and the alien does not wish to withdraw his/her application for admission, the inspector should place the alien into an expedited removal proceeding.

(Revised IN03-40)

15.6 Transit without Visa (TWOV) Admissions.

(a) General description. An alien in immediate and continuous transit through the U.S. without a visa may be admitted under certain restrictions. Admission procedures are significantly different than for other nonimmigrants. Only a carrier signatory to a TWOV agreement may bring a TWOV applicant to the U.S., and only to specific ports-of-entry. TWOV agreements are provided for by section 233 of the Act and discussed in Chapter 42. Ports-of-entry for TWOV passengers are listed in 8 CFR 214.2(c). The list of carriers with TWOV agreements is contained in Appendix 42.1. Aliens of certain nationalities are only eligible for limited TWOV privileges as specified in 8 CFR 212.1(f)(2). Citizens, or in some instances residents, of certain countries are barred from TWOV privileges entirely, as specified in 8 CFR 212.1(f)(3). TWOV carriers are liable for “liquidated damages” whenever an arriving TWOV passenger fails to depart as scheduled. Liquidated damages procedures are discussed in Chapter 43.

(b) Documents required. TWOV applicants are exempt passport and visa valid for entry into the U.S., but must be in possession of a travel document or documents establishing his/her identity and nationality and ability (including any required visa) to enter the country to which destined, other than the U.S. [See 8 CFR 212.1(f)(1).]. Each TWOV passenger must have a confirmed transportation ticket to depart from the U.S. within 8 hours or on the first available transportation. A maximum of two stopovers en route is permitted.

(c) Processing procedures. Each arriving TWOV passenger should present a blue I-94T along with other required documents stated above. Enter the appropriate carrier arrival and departure information including the departure ticket number [WITHHELD] in the shaded blocks on the lower front of the arrival portion of I-94T. It is critical that all information on the I-94T be complete, correct and legible, since the form is the basis on which the Service can assess damages in the event the passenger fails to depart. Staple the departure I-94 to the outbound ticket coupon and retain the arrival I-94 at the port. Stamp the passport with the admission stamp and endorse it “TWOV”. Once the admission process is complete, turn the passenger and documents over to the arrival carrier, in accordance with local port procedures.

(d) Processing Ineligible and Mala Fide TWOV Applicants; TWOV Abscondees. If you determine a TWOV applicant is technically ineligible for that classification or is not a bona-fide transit passenger, first determine if the alien will be permitted to leave on his or her own recognizance, or remain in custody until departure. Contact the airline to arrange for a departure flight. If the alien is to be released, prepare Form I-160 and a regular I-94, endorsed with the parole stamp and departure information. Complete Form I-259 and serve it on the carrier. Institute fine proceedings, if the alien was statutorily ineligible for TWOV status.