



U.S. Department of Justice
 Immigration and Naturalization Service
 Western Regional Office
 Office of the Regional Director

WRINS 70/6.2.23

P.O. Box 80080
 Laguna Niguel, CA 92607-0080

AUG 1 2000

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MEMORANDUM FOR DISTRICT DIRECTORS
 WESTERN

FROM: Johnny N. Williams
 Regional Director

SUBJECT: Guidance for Processing Applicants Under the North American Free Trade Agreement (NAFTA)

The attached memorandum from the Office of Programs provides all Service employees with additional guidance related to processing of applicants for admission under the provisions of the NAFTA.

This memorandum also serves to eliminate disparities among ports-of-entry (POE) with regard to processing of professional level occupations (e.g., specialty engineering degrees, scientific technician/technologist, etc.) that lack specificity set forth in Appendix 1603.D.1 of the NAFTA. The attached Appendix 1603.D.1, which is codified in 8 CFR 214.6 (e), provides guidance to Service officers in processing applicants for admission as a Trade NAFTA.

Please disseminate the attached memorandum by fax to all POEs under your jurisdiction to ensure immediate notification of this information. Also include this memorandum in the NAFTA Handbook, Section 8, entitled NAFTA Cables, for reference. Questions regarding this issue may be addressed to Peter Gordon, Assistant Regional Director for Inspections, at (949) 360-3045.

Attachment



U.S. Department of Justice
Immigration and Naturalization Service

HQINS 70/6.2.23

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

JUL 24 2000

MEMORANDUM FOR ALL REGIONAL DIRECTORS
DIRECTOR OF TRAINING

FROM: Michael D. Cronin *Michael D. Cronin*
Acting Executive Associate Commissioner
Office of Programs

SUBJECT: Guidance for Processing Applicants under the North American Free Trade Agreement (NAFTA)

This memorandum is being issued to provide additional guidance to Ports-of-Entry (POEs) when processing applicants under the North American Free Trade Agreement (NAFTA).

The Office of Inspections has been asked to provide guidance on whether the occupation Software Engineer is encompassed within the purview of NAFTA. Section 214(e) of the Immigration and Nationality Act states that 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 NAFTA. However, such an applicant must demonstrate business activity at a professional level in one of the professions set forth in Appendix 1603.D.1 to Annex 1603 of the NAFTA. The Immigration and Naturalization Service (INS) uses the coding symbol TN (Trade NAFTA) to refer to a NAFTA professional.

Appendix 1603.D.1 to Annex 1603 of the NAFTA includes the occupation of "Engineer" within the list of professional level occupations. The minimum requirement for entry as a NAFTA engineer is a baccalaureate or licentiate degree or a state/provincial license. There is no further delineation of the types of specialty engineering degrees (e.g., civil, mechanical, electrical, etc.) that qualify for TN classification. Since the appendix doesn't specify certain specialties, the three NAFTA partners interpret this to mean that all engineering specialties are included. Accordingly, an individual engaged in business activities as a "software engineer" at a

professional level that requires a baccalaureate or licentiate degree or state/provincial license may qualify under the profession of "engineer" under the NAFTA. The question is whether the individual possesses the requisite engineering degree or state/provincial license.

This office has also been asked to provide guidance regarding the minimum education requirements and alternative credentials required for applicants for admission under the NAFTA. In addition to "engineer", Appendix 1603.D.1 lists 60 occupations at the professional level with a corresponding list of educational requirements. If there is an acceptable alternative credential to the educational requirement, it is also listed. The degree should be in the field or in a closely related field. Officers should use good judgement in determining whether a degree in an allied field may be appropriate. Returning to the "software engineer" example, it is reasonable to require the TN applicant to provide evidence of a degree in engineering just as it is reasonable to require an engineering degree for admission as a TN to perform professional level duties as a civil engineer. Please note that "Hotel Manager" is the only occupation that specifically requires a baccalaureate or licentiate degree in Hotel/Restaurant Management or a Post-Secondary diploma/certificate in Hotel/Restaurant Management plus three years experience in Hotel/Restaurant Management.

The footnotes to Appendix 1603.D.1 are codified at 8 CFR 214.6(c) and provide additional guidance that is useful to the officer in determining whether an applicant for admission qualifies as a TN. Appendix 1603.D.1 is attached for your reference. For purposes of the NAFTA entry requirements, baccalaureate or licentiate degrees issued by institutions outside of the NAFTA countries may be acceptable whereas post-secondary diplomas or post-secondary certificates must be issued in Canada, Mexico, or the United States.

Another professional-level occupation that is subject to interpretation is the "Scientific Technician/Technologist". Appendix 1603.D.1 specifies that, for temporary entry under NAFTA, the applicant 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. One of the footnotes to the Appendix 1603.D.1 is pertinent, providing that to qualify as a Scientific Technician/Technologist the applicant must be seeking temporary entry to work in direct support of professionals in one of those disciplines. Although no degree or post-secondary diploma is required for entry, the immigration officer must be satisfied that the applicant possesses theoretical knowledge in one of those disciplines. Headquarters continues to work with other Federal agencies and the Canadian and Mexican officials to develop common interpretative guidance and definitions for the terms "possess theoretical knowledge" and "works in direct support". Additional guidance will be provided once an agreement on these interpretive matters is reached.

Please include this memorandum in the NAFTA Handbook, Section 8 entitled NAFTA Cables. If you have further questions regarding this memorandum please contact either Assistant Chief Inspector Jennifer Sava at (202) 307-1942 or Patrice L. Ward at (202) 514-0964.

Attachment