

Vermont Service Center

Standard Operating Procedure (SOP)

I-129 TN

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February 1, 2011

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General, Continued

Revisions

Numbered revisions of this document will be issued as required; no other document will be considered a valid modification.

Electronic and Printed Copies

All personnel who maintain a printed copy of the document will post the revisions upon receipt. Electronic copies of the document will be modified to reflect changes as they are issued. A listing of posted revisions will be included in the electronic document to serve as a summary of all revisions.

Proposed Changes

Proposed changes should be submitted with appropriate supporting documents through first-line supervisors to Assistant Center Directors (ACDs) in Adjudications.

Location of Revisions

Current revisions will be posted in the beginning of the document and all new changes will be highlighted in yellow. A complete listing of all prior revisions can be found at the end of this document in the Previous Revisions section.

Revision #	Date	Subject	Pages
10	2/1/11	Added list of approved Credentialing Organizations that provide Healthcare Workers Certifications.	13
		Instructions added for lack of certification.	13
		Removed CRU drop off crate location to have officers bring case to CRU for fee refund.	9

Overview

Introduction

The TN classification is part of a trilateral agreement between Canada, Mexico, and the United States.

Under section 214(e) of the INA, 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 North American Free Trade Agreement (NAFTA).

Section of Law

8 CFR Sec. 214.6 covers Canadian and Mexican citizens seeking temporary entry to engage in business activities at a professional level. Pursuant to NAFTA, an applicant seeking admission under this section shall demonstrate business activity at a professional level in one of the professions set forth in *Appendix 1603.D.1 to Annex 1603*.

Who May File

The U.S. employer of a citizen of Canada or Mexico in TN status or a U.S. entity (in the case of a citizen of Canada or Mexico in TN status who has a foreign employer) may request an extension of stay by filing Form I-129 with the correct fee noted, with the appropriate Service Center.

The beneficiary must be physically present in the United States at the time of filing of the extension of stay.

Where to File

- Canadian citizens apply for initial TN status at a port of entry.
 - Mexican citizens apply for initial TN status with the Department of State.
 - Extensions of TN status or a change of status to TN are filed at the VSC.
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Overview, Continued

When to File

The petition may not be filed or approved earlier than six months before the date of actual need for the beneficiary's services.

If a petition is accepted more than six months prior to the date of actual need (i.e. requested employment start date), the case must be administratively closed and the fee refunded to the petitioner.

Officers must prepare a **G19** letter (found in Word under Standards and Generic Letters/Memos and Letters) and administratively close the case when the case is filed too early. The case must be routed through a supervisor for sign-off prior to sending to clerical. Clerical must send it to CRU after the **G19** notice is mailed.

Step	Action
1	Perform all necessary IBIS, NSEERS, and SQ94 checks.
2	Prepare the G19 letter and save to the LAN under "I129 Orders"
3	Access "Adjudicate a Case".
4	Wand or enter the receipt number of the case.
5	Press [F10].
6	Select "Case Management"
7	Select "Administrative Close"
8	Prepare a Customer Feedback Form (CFF) and route as indicated on the form.
9	Send file to SISO for approval of fee refund. SISO will route to clerical to prepare the G19 letter. NOTE: Clerical forwards case to CRU for fee refund after mailing letter.

Validity Date

- Admitted for a validity period of up to three years. [8 CFR 214.6(e)]
- May file for a three year extension of stay. [8 CFR 214.6(h)(1)(iii)]
- There is no limit on the number of extensions a person may receive in TN status.

NOTE: A petition for EOS and COS is either approved for both or denied (no split decision).

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Overview, Continued

Dependents of the TN

Spouse or unmarried minor children accompanying or following to join will be admitted in **TD** status for the same period of time as the principal alien.

- The dependents will file the I-539 for an EOS.
 - The dependents are not authorized employment.
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Change of Status (COS)

You will usually see a COS with the following:

- B2 to TN
 - H-1B Cap Cases to TN
 - H-1B or L-1 when they have met their six year
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Appeal Rights

There are no appeal rights for the denial of TN extensions.

Dual Intent

A TN **cannot** have dual intent, i.e., cannot have a pending I-485 when in TN status. However, the filing of an I-130 or I-140 does not necessarily establish intent to immigrate. The officer needs to review all of the evidence presented to make a determination that the beneficiary has immigrant intent.

TN1 and TN2

TN1 Initial Entry

A citizen of Canada who seeks admission under NAFTA will apply for admission with an immigration officer at a:

- U.S. Class A port-of-entry,
- U.S. airport handling international traffic, or
- U.S. pre-clearance/pre-flight station.

No prior petition, labor certification or prior approval will be required. The applicant will be issued an I-94 for a period not to exceed one year and will be subject to a fee at the POE.

TN1 General Facts

- Initial filing when the TN1 is outside the country should not have been accepted by the contractor. Send to CRU for administrative closure and fee refund.
 - TN-1s rarely have an uninterrupted stay in the United States and will usually make trips outside the country.
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TN2 Initial Entry

A Mexican citizen wishing to come to the United States in TN classification must apply directly to the Department of State for a visa. Upon approval and issuance of a visa the alien may apply for admission to the United States.

TN2 General Facts

- Initial filing when the TN2 is outside the country, the petition will be rejected and the filing fee will be refunded.
 - A TN2 with a Licenciatura Degree is equivalent to a U.S. four year degree.
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TN Facts

- A high percentage of TN filings will be for Premium Processing.
 - There is also a high rate of denials for "Management Consultants."
 - To qualify as an "Engineer," the TN must have an actual degree in the related engineer field.
 - TN extensions are considered applications and not petitions. Dependents will file for an extension with the I-539.
 - A TN, like an H-1B, may file to work for another company. However, the TN does not have portability and cannot start working for the new company until the approval of the I-129.
 - Teachers under TN may teach post secondary education only and are not allowed to teach at the Grade/High School level.
 - Doctors under TN may teach curriculum related to their field of medical expertise but may not practice medicine or provide patient care.
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Filing Requirements

General Filing Requirements

- The petitioner must be a U.S. entity or a U.S. entity of a foreign employer. The petitioner may not be a foreign entity.
 - The beneficiary cannot be self-employed.
 - The petition may be filed for one beneficiary only.
 - A petition that is requesting initial status or that a port of entry be notified upon approval will be rejected.
 - Employment with a new or additional employer is not authorized prior to USCIS approval of a new petition.
 - Must have an employment offer in the United States which requires at least a baccalaureate degree or appropriate credentials demonstrating status as a professional.
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Signature Requirements for a Corporation or other Legal Entity

A qualified agent must sign the petition on behalf of a corporation or other legal entity. A qualified agent must:

- be an officer or employee of the petitioning entity;
- have executive or managerial authority to sign documents on behalf of the entity; and
- have knowledge of the factual claims made in the application or petition to attest to the truth of the factual claims.

An attorney that is employed by the petitioner as in-house counsel generally qualifies as a signer as described above. If the attorney is working for an outside agency, he or she does not meet the qualified agent requirements above or requirements of 8 CFR 103.2(a)(2) concerning a properly signed petition. (See G-28 SOP for additional information on petitions signed by counsel.)

Petition may be denied pursuant to 8 CFR 103.2(b)(8)(ii) for failing to establish eligibility for the benefit sought if the petition was accepted as signed, but it was not signed by a qualified signer.

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Filing Requirements, Continued

Exceptions The following professions have additional qualifications or necessary credentials.

Profession	Additional Requirements
Management Consultant	<ul style="list-style-type: none"> • Baccalaureate or Licenciatura Degree; or • Equivalent professional experience as established by statement or professional credential attesting to five years experience as a management consultant; or • Five years experience in a field of specialty related to the consulting agreement. <p>NOTE: Cannot be a combination of a degree and experience.</p>
Computer Systems Analyst	<ul style="list-style-type: none"> • Secondary degree; or • Equivalent professional experience as established by statement or professional credential attesting to three years experience.
Scientific Technician/Technologist	Possession of: <ul style="list-style-type: none"> (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.
Registered Nurse	State/provincial license or Licenciatura Degree. Commission on Graduates of Foreign Nursing Schools (CGFNS) certificate is required.

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Filing Requirements, Continued

Evidence Required

The following evidence is required to qualify as a TN.

- Proof of citizenship
 - Profession of the beneficiary
 - Employment offer in the United States
 - Educational qualifications or appropriate credentials
 - Evidence of maintaining previous status
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Proof of Citizenship

- Canadian or Mexican birth certificate or passport.
 - A landed immigrant of Canada is not a Canadian citizen.
 - If the beneficiary has a country of birth other than Canada or Mexico, write Canada or Mexico in the country of birth space on the Form I-129.
 - The county of birth must be Canada or Mexico in CLAIMS before the petition is approved.
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Certification of Foreign Health Care Workers

The following health care occupations are inadmissible to the United States unless they present a certification from one of the approved credentialing organizations listed in the below section. Certification is needed in addition to any licensure requirements. [Section 212(a)(5)(C) of the INA and 8 CFR 212.15]

- Medical Technologist
- Medical Technician
- Nurse
- Occupational Therapist
- Physical Therapist
- Physician's Assistant
- Speech Language Pathologist

There is no provision in regulations for exceptions to foreign health care workers who are educated in the United States, who are currently licensed to practice in the United States, or to whom certificates were issued prior to the publication of the interim regulation.

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Filing Requirements, Continued

Approved Credentialing Organizations for Health Care Workers

The following independent credentialing organizations have received USCIS approval to issue certificates in the listed health care occupations:

1. **Commission on Graduates of Foreign Nursing Schools (CGFNS)** can issue certificates for nurses, physical therapists, occupational therapists, speech-language pathologists and audiologists, medical technologists (also known as clinical laboratory scientists), medical technicians (also known as clinical laboratory technicians), and physician assistants.
2. **National Board for Certification in Occupational Therapy (NBCOT)** can issue certificates for occupational therapists.
3. **Foreign Credentialing Commission on Physical Therapy (FCCPT)** can issue certificates for physical therapists.

NOTE: If the beneficiary has been issued a certificate from one of these approved credentialing organizations, there is no need to require an evaluation of the beneficiary's foreign education. Part of the certification process of these organizations is to evaluate the beneficiary's foreign education. If the beneficiary's foreign education is not equivalent to the required U.S. education, the organization will not issue the certification.

Lack of Certification

If no evidence is received to demonstrate that a health care worker has the required certification, the petition should be denied using I129TN20. When a TN applicant has not demonstrated eligibility for a change of status or extension of stay, the entire petition must be denied.

Profession of the Beneficiary

Do not rely on the job title given by the petitioner. Review the duties to be performed to determine if the job qualifies as a professional occupation.

Employment Offer in the U.S

The employment offer in the United States must include the following:

1. Description of duties to be performed
 2. Anticipated length of stay
 3. Arrangements for pay
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Filing Requirements, Continued

Educational Qualifications or Appropriate Credentials

- If 8 CFR states that a baccalaureate or licenciatura degree is required, the degree is required. There is no substitution of experience for education.
 - A degree issued in another country that has been determined to be equivalent to a U.S. bachelor's degree is acceptable.
 - If the profession requires a state or local license to perform the duties of the profession, the beneficiary must have a permanent or temporary license prior to approval of the petition.
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Evidence of Maintaining Previous Status

The beneficiary must be physically present in the United States at the time of filing for an extension or change of status. S/he must submit a copy of the beneficiary's I-94 and evidence of maintaining status.

NOTE: Some Canadian citizens may enter the United States as a visitor and will not be issued an I-94 card. If they give you the date, place, and class of admission, issue a replacement (new) I-94 card. Put the new I-94 number into CLAIMS before approving the petition.

Passport Requirements for EOS and COS Requests

General Passport Requirements

8 CFR 214.1(a)(3)(i) states in pertinent part that:

Upon application for admission, the alien must present a valid passport and valid visa unless either or both documents have been waived...The passport of an alien applying for admission must be valid for a minimum of six months from the expiration date of the contemplated period of stay, unless otherwise provided in this chapter, and the alien must agree to abide by the terms and conditions of his or her admission.

An alien applying for an extension of stay must present a passport only if requested to do so by the Department of Homeland Security. The passport of an alien applying for an extension of stay must be valid at the time of application for extension, unless otherwise provided in this chapter, and the alien must agree to maintain the validity of his or her passport and to abide by all the terms and conditions of his extension.

NOTE: Although the regulation speaks to admission of nonimmigrants and passports being valid for the contemplated period of stay, an alien's passport may be valid for only part of the period of stay requested on an extension of stay (EOS) or change of status (COS) application or petition. It would be unreasonable to ask the alien to renew his or her passport in order to have the passport valid for the entire contemplated period of stay on an EOS/COS request.

Passport Validity at Time of Filing

- The above regulation only requires the passport of an alien applying for an EOS be valid at the time of application for the extension.
 - While the regulations are silent regarding passport validity and COS, a request for COS generally seeks to extend the stay of the alien, so it would seem logical that the alien's passport should also be valid at the time of filing a request for a COS.
 - Likewise, eligibility must be demonstrated at the time of filing pursuant to 8 CFR 103.2(b)(1).
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Passport Requirements for EOS and COS Requests, Continued

Passport Requirements for Form I-129

- If the “Date Passport Expires” field in part 3, item 2 of Form I-129 indicates the alien’s passport was valid at the time of filing, but a copy of the passport has not been provided, and the case is otherwise approvable, do not issue a Request for Evidence (RFE) just for a copy of the passport. The petitioner or applicant’s statement on the form is acceptable evidence that the alien had a valid passport at the time of filing.
 - If other evidence is missing and an RFE is needed, then you may include a request for a photocopy of a valid passport with the RFE.
 - Exercise discretion when deciding if you will accept an explanation of why a passport is not valid at the time of filing.
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Definitions

**Business
Activities at a
Professional
Level**

Those undertakings which require that, for successful completion, the individual has at least a baccalaureate degree or appropriate credentials demonstrating status as a professional in a profession set forth in Appendix 1603.D.1 of the NAFTA.

Business Person

As defined in the NAFTA, means a citizen of Canada or Mexico who is engaged in the trade of goods, the provision of services, or the conduct of investment activities.

**Engage in
Business
Activities at a
Professional
Level**

The performance of prearranged business activities for a U.S. entity, including an individual.

It does not authorize the establishment of a business or practice in the United States in which the professional will be, in substance, self-employed. A professional will be deemed to be self-employed if he or she will be rendering services to a corporation or entity of which the professional is the sole or controlling shareholder or owner.

**Temporary
Entry**

Temporary entry, as defined in NAFTA, means entry without the intent to establish permanent residence. The alien must satisfy the inspecting immigration officer that the proposed stay is temporary.

A temporary period has a reasonable, finite end that does not equate to permanent residence. In order to establish that the alien's entry will be temporary, the alien must demonstrate to the satisfaction of the inspecting immigration officer that his or her work assignment in the United States will end at a predictable time and that he or she will depart upon completion of the assignment.

Addendum 1 – TN Job Codes

Accountant	014	Medical Professions	101
Architect	020	Dentist	111
Computer Systems Analyst	050	Dietician	111
Disaster Relief Ins. Claims Adjuster	012	Medical Lab Tech/Medical Tech	150
Economist	080	Nutritionist	111
Engineers		Occupational Therapist	115
Aerospace Engineer	031	Pharmacist	111
Chemical Engineer	035	Physician (teaching or research only)	090
Civil Engineer	037	Physiotherapist/Physical Therapist	115
Electrical/Electronic Engineer	039	Psychologist	080
Industrial Engineer	041	Recreational Therapist	115
Mechanical Engineer	043	Registered Nurse	110
Metallurgic & Material	047	Veterinarian	101
Engineer (no specialty given)	049	Scientists	
		Agriculturist (agronomist)	070
Forester	070	Animal Breeder	155
Graphic Designer	120	Animal Specialist	070
Hotel Manager	010	Animal Scientist	070
Industrial Designer	120	Apiculturist	070
Interior Designer	120	Astronomer	060
Land Surveyor	020	Biochemist & Biologist	070
Landscape Architect	020	Chemist	060
Lawyer	087	Dairy Scientist	070
Notary (in the province of Quebec)	150	Entomologist & Epidemiologist	070
Librarian	097	Geneticist	070
Management Consultant	012	Geochemist	060
Mathematician (including statistician)	050	Geologist	060
Range Manager	500	Geophysics (inc. oceanographer)	060
Range Conservationist	500	Horticulturist	080
Research Asst in post-secondary inst.	150	Meteorologist	060
Scientific Technician/Technologist	150	Pharmacologist	111
Social Worker	075	Physicist (inc. oceanographer)	060
Sylviculturist (inc. forestry specialist)	070	Plant Breeder	500
Technical Publications Writer	120	Poultry Scientist	070
Urban Planner (including geographer)	080	Soil Scientist	070
Vocational Counselor	095	Zoologist	070
		Teacher (College, Seminary, Univ.)	090

Previous Revisions

**Changes Prior
to Current
Revision Date**

The revisions listed below represent changes that were made to this document prior to the current revision date.

Revision #	Date	Subject	Pages
-----	4/14/06	Document created	
1	8/30/06	Created Addendum 1- TN Job Codes	10
2	11/19/07	Clarified issue of dual intent.	5
3	3/5/08	All prior revisions to this document have been moved to the back of this document under the "Previous Revisions" block.	11
4	07/01/08	Revised the "TN1 General Facts" section to indicate that an initial filing of a TN1 when the applicant is outside of the country will no longer be denied. The application was accepted by the contractor in error and should be routed to CRU.	7
		Revised the "General Filing Requirements" section regarding a petition requesting initial status or that a POE be notified upon approval. The guidance to deny the filing has been replaced with instruction to reject the filing.	8
5	08/29/08	Revised the "General Filing Requirements" to include the section regarding "Certification of Foreign Health Care Workers." This guidance establishes that specific health care occupations require additional certification from one of the approved credentialing organizations listed in the Act and regulations.	9
6	04/08/09	Added a section titled "When to File" with information and steps for G19 letter for petitions filed or approved earlier than six months before the actual need for the beneficiary's services.	6
7	6/26/09	"Validity Dates" block is revised. For the first bullet, the beneficiary may now be admitted for up to three years [8 CFR Section 214.6(e)]. For the second bullet, the petitioner may now file for a three year extension of stay. [8 CFR Section 214.6(h)(1)(iii)]	7
8	12/11/09	<u>Instructions added regarding verification of passport validity for all EOS/COS requests.</u>	11, 12
9	7/23/10	Signature requirements for a corporation or other legal entity	8