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Re: DHS Docket No. USCIS-2007-0056] , 8 CFR Parts 214 and 248 RIN  
1615-AB64 USCIS Interim rule on Period of Admission and Stay for  
Canadian and Mexican Citizens Engaged in Professional Business Activities  
— TN Nonimmigrants

To Whom It May Concern:

The American Immigration Lawyers Association (AILA) submits the following comments to the Interim Rule on Period of Admission and Stay for Canadian and Mexican Citizens Engaged in Professional Business Activities — TN Nonimmigrants [DHS Docket No. USCIS-2007-0056].

AILA is a voluntary bar association comprised of over 11,000 attorneys and law professors practicing and teaching in the field of immigration and nationality law. AILA takes a broad view of immigration law issues, as our member attorneys represent thousands of businesses in sponsoring foreign workers, as well as tens of thousands of individuals applying for temporary or permanent employment-based visas.

AILA very much appreciates the efforts that the U.S. Citizenship and Immigration Services (USCIS) has made to increase the initial period of admission, extension of stay, and readmission of applicants for TN professional status. This is especially important now since the H-1B category continues to be oversubscribed. It also demonstrates a recognition of the purpose and spirit of the NAFTA and it will facilitate the exchange of, among other things, talented business professionals between NAFTA treaty participants.

AILA agrees that increasing the period of authorized stay from one year to three would reduce the financial and administrative burden of employers and applicants merely by the fact that they would not have to repeat the application process every year. This would also assist USCIS and USCBP by reducing their adjudicatory workloads. We also agree that it would help to provide the U.S. with a stable and committed work force. Employers will be able to rely on a continued and longer term work force which will in turn allow them to commit to longer and more complex projects. This is especially important in today's economic climate when many worry that U.S. projects are disappearing to be performed by off shore competitors.

We would also like to point out that this change will assist the USCBP in the performance of its duties. Specifically, Mexican TN nationals are eligible for, and often do receive, TN visas that are valid for three years. Under the current regulation, however, applicants may only be admitted in one year increments. Because CBP officers are generally accustomed to admitting applicants for the duration of their visas, especially when they are good for three years (as they often are in H-1B and L-1 instances) mistakes occur and Mexican TN applicants are too often provided with a three year I-94 card rather than valid for one year. Although such an I-94 may appear valid on its face it must nevertheless be corrected at a deferred inspection station to ensure that the applicant complies with the regulation and does not remain in the U.S. in a period that is longer than is authorized by the law. By changing the regulation to allow for a three year admission period this problem would be eliminated.

AILA would like to offer one addition to the proposed change. 8 C.F.R. § 214.6(d)(2) states that a Canadian citizen "seeking temporary entry as a business person to engage in business activities at a professional level shall make application for admission with a Department officer at the United States Class A port-of-entry, at a United States airport handling international traffic, or at a United States pre-clearance/pre-flight station." It does not, however, state that a U.S. employer of a potential TN beneficiary can petition for TN status on behalf of a Canadian or Mexican employee initially or directly at a Service Center.

8 C.F.R. § 214.6 (h)(1) and 8 C.F.R. § 214.6(i)(1) respectively provide that applications for Canadian citizens for extensions of, or changes to, TN status may be filed at Service Centers. There appear to be differing views, however, as to whether an initial TN petition can be filed directly at a Service Center, unless the petition is filed in connection with a change of status. While it admittedly may be rare for an initial petition to be filed at a Service Center there are certain instances where this may be beneficial. Specifically, an application for TN status made at a port of entry cannot be approved in advance of an applicant's intended start date. Thus, employers are required to wait until an intended employee actually applies for status to know whether the application will be approved. When applications are rejected, employers are often

“left in the lurch” and scrambling to replace an employee whose immediate employment they had counted on and prepared for.

This problem could be eliminated entirely if 214.6(d)(2) were changed as follows:

A citizen of Canada seeking temporary entry as a business person to engage in business activities at a professional level may make application for admission with a Department officer at the United States Class A port-of-entry, at a United States airport handling international traffic, at a United States pre-clearance/pre-flight station. Alternatively, the petitioning employer may file a form I-129 at a Service Center for the alien’s classification in TN status.

Since Service Centers are already charged with adjudicating change and extension petitions, they are already equipped and expected to adjudicate the merits of these petitions. Thus, there would be no additional training needed for adjudicators. Further, the majority of these applications would likely still be presented at ports of entry or pre-clearance stations because it is generally a less burdensome and less expensive procedure. Thus, permitting these filings would not be likely to significantly increase a Service Center’s work load. All it would do is provide employers who need it an opportunity to engage in some advance planning. USCIS has already noted that this rule is being introduced to assist and ease the burden of employers hiring TN professionals. This addition would only foster that purpose.

Finally, permitting an initial petition as an alternative process would not run afoul of Section D of Annex 1603 to NAFTA because the petition process suggested here would be alternative to the current application process.

Again, AILA very much appreciates the efforts of the USCIS in seeking to expand the immigration benefits of professionals under the NAFTA. It also agrees with and concurs with the comments made by the agency regarding the benefits that will occur to employers and applicants as a result of the increased period of authorized stay. If possible, it would like to increase those benefits by clarifying that initial petitions made by U.S. employers of Canadian citizen TN beneficiaries can be filed at a Service Center in addition to a port of entry or pre-flight inspection station. We thank you for considering our comments and recommendations.

Sincerely,

AMERICAN IMMIGRATION LAWYERS ASSOCIATION