

9 FAM 41.59

PROFESSIONALS UNDER THE NORTH AMERICAN FREE TRADE AGREEMENT

(CT:VISA-970; 06-12-2008)

(Office of Origin: CA/VO/L/R)

9 FAM 41.59 RELATED STATUTORY PROVISIONS

(CT:VISA-970; 06-12-2008)

See INA 214(e)(2) (8 U.S.C. 1184(e)(2)) and INA 214(j) (8 U.S.C. 1184(j)).

INA 214(e)(2)

e. Nonimmigrant professionals and annual numerical limit

- (2) An alien who is a citizen of Canada or Mexico, and the spouse and children of any such alien if accompanying or following to join such alien, who seeks to enter the United States under and pursuant to the provisions of Section D of Annex 1603 of the North American Free Trade Agreement (in this subsection referred to as "NAFTA") to engage in business activities at a professional level as provided for in such Annex, may be admitted for such purpose under regulations of the Attorney General promulgated after consultation with the Secretaries of State and Labor. For purposes of this chapter, including the issuance of entry documents and the application of subsection (b) of this section, such alien shall be treated as if seeking classification, or classifiable, as a nonimmigrant under section 1101 (a)(15) of this title. The admission of an alien who is a citizen of Mexico shall be subject to paragraphs (3), (4), and (5). For purposes of this paragraph and paragraphs (3), (4), and (5), the term "citizen of Mexico" means "citizen" as defined in Annex 1608 of NAFTA.

INA 214(j)

j. Labor disputes

- (1) Notwithstanding any other provision of this chapter, an alien who is a citizen of Canada or Mexico who seeks to enter the United States

- under and pursuant to the provisions of Section B, Section C, or Section D of Annex 1603 of the North American Free Trade Agreement, shall not be classified as a nonimmigrant under such provisions if there is in progress a strike or lockout in the course of a labor dispute in the occupational classification at the place or intended place of employment, unless such alien establishes, pursuant to regulations promulgated by the Attorney General, that the alien's entry will not affect adversely the settlement of the strike or lockout or the employment of any person who is involved in the strike or lockout. Notice of a determination under this paragraph shall be given as may be required by paragraph 3 of article 1603 of such Agreement. For purposes of this paragraph, the term "citizen of Mexico" means "citizen" as defined in Annex 1608 of such Agreement.
- (2) Notwithstanding any other provision of this chapter except section 214(t)(1) of this title, and subject to regulations promulgated by the Secretary of Homeland Security, an alien who seeks to enter the United States under and pursuant to the provisions of an agreement listed in subsection (g)(8)(A) of this section, and the spouse and children of such an alien if accompanying or following to join the alien, may be denied admission as a nonimmigrant under subparagraph (E), (L), or (H)(i)(b1) of section 101(a)(15) of this title if there is in progress a labor dispute in the occupational classification at the place or intended place of employment, unless such alien establishes, pursuant to regulations promulgated by the Secretary of Homeland Security after consultation with the Secretary of Labor, that the alien's entry will not affect adversely the settlement of the labor dispute or the employment of any person who is involved in the labor dispute. Notice of a determination under this paragraph shall be given as may be required by such agreement.

9 FAM 41.59 RELATED REGULATORY PROVISIONS

(CT:VISA-970; 06-12-2008)

See 22 CFR 41.59.

41.59 Professionals under the North American Free Trade Agreement.

- (a) *Requirements for classification as a NAFTA professional.* An alien shall be classifiable under the provisions of INA 214(e) if:
- (1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and
 - (2) In the case of citizens of Mexico, the consular officer has received from DHS an approved petition according classification as a NAFTA Professional to the alien or official confirmation of such petition approval, or DHS confirmation of the alien's authorized stay in such classification; or
 - (3) In the case of citizens of Canada, the alien shall have presented to the consular officer sufficient evidence of an offer of employment in the United States requiring employment of a person in a professional capacity consistent with NAFTA Chapter 16 Annex 1603 Appendix 1603.D.1 and sufficient evidence that the alien possesses the credentials of that profession as listed in said appendix; or
 - (4) The alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.
- (b) *Visa validity.* The period of validity of a visa issued pursuant to paragraph (a) of this section may not exceed the period indicated in the petition, notification, or confirmation required in paragraph (a)(2) of this section. The approval of a petition by DHS does not establish that the alien is eligible to receive a nonimmigrant visa. The period of validity of a visa issued pursuant to subparagraph (a)(3) of this section may not exceed the period established on a reciprocal basis.
- (c) *Temporary entry.* Temporary entry means an entry into the United States without the intent to establish permanent residence. The alien must satisfy the consular officer that the proposed stay is temporary. A temporary period has a reasonable, finite end that does not equate to permanent residence. The circumstances surrounding an application should reasonably and convincingly indicate that the alien's temporary work assignment in the United States will end predictably and that the alien will depart upon completion of the assignment.
- (d) *Labor disputes.* Citizens of Canada or Mexico shall not be entitled to classification under this section if the Secretary of Homeland Security and the Secretary of Labor have certified that:
- (1) There is in progress a strike or lockout in the course of a labor dispute in the occupational classification at the place or intended place of employment; and

- (2) The alien has failed to establish that the alien's entry will not affect adversely the settlement of the strike or lockout or the employment of any person who is involved in the strike or lockout.

[58 FR 68527, Dec. 28, 1993, as amended at 63 FR 10305, Mar. 3, 1998]