

Trade NAFTAs for Business Professionals



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Canadian professionals have a unique opportunity to obtain same-day work authorization for up to three years at a time, renewable indefinitely, thanks to the United States-Mexico-Canada Agreement (USMCA). Mexican professionals can get that same status, but they must apply for a visa first, and their entries are limited to one year at a time.

The USMCA, which entered into force on July 1, 2020, substituted for the North America Free Trade Agreement (NAFTA) and provides a streamlined process for professionals in more than 60 eligible professions to work in the United States. The status, which is called Trade NAFTA (TN), has not been updated following the change in relevant treaty to USMCA.

Importantly, professionals in the enumerated job categories — generally meaning individuals with four-year degrees — can work in prearranged, professional-level activities for U.S. or foreign employers. However, many people don't realize that you don't have to necessarily have a U.S. sponsor. For example, an actuary who owns his own business in Canada, but has one or more U.S. clients for whom he needs to enter the United States periodically to do work, can potentially obtain TN status to do so. However, he would need to provide a contract or

letter from his U.S. client showing that he will be doing work for them, as part of the application. This can be problematic, as some U.S. clients may be confused as to why a letter would be required from them. However, showing the nexus to a U.S. business is often critical when the applicant does not have a specific U.S. sponsor.

There are multiple advantages to obtaining TN status. When obtaining TN work authorization through the USMCA, there is no need to demonstrate that you are not taking a job from a U.S. worker. Rather, the U.S. welcomes eligible individuals working in these job categories. These professional positions have been recognized through collaborative discussions among the governments of Canada, Mexico, and the United States as jobs that enhance trade and economic co-operation by allowing qualified individuals to provide their services without facing excessive barriers.

In certain and very limited job categories on the USMCA list, there may be alternative credentials that can qualify a professional for a role in the United States. The most common of these is the job category “Management Consultant,” which requires either a related university degree, at least five years of experience as a management consultant, or at least five years of experience in the field in which the TN will be consulting. Since a degree is not a minimum requirement, workers who do not fit into any other category under the USMCA have attempted to use this category to squeeze into “easy, quick” work authorization for decades. As a result, it has become more difficult to obtain work authorization as a management consultant under the USMCA, as government officials adjudicating these cases can be automatically skeptical of an applicant’s eligibility.

Some job categories — such as biologist, where the degree directly relates to the position and is relatively straightforward and well-understood by adjudicating officers — may not need evaluation and support by a seasoned immigration professional to obtain approval. However, others — such as management consultants, scientific technicians and technologists — should definitely receive professional feedback before applying to maximize their chances of success. Remember, first impressions matter; if you obtain a denial because an application is poorly prepared and then need to re-apply to show how you qualify, the second adjudication will almost certainly be scrutinized with an eye to confirming the prior denial rather than approving the case.

For business professionals who would like to explore the possibility of obtaining TN status, it is always recommended to seek competent immigration counsel to discuss options and opportunities. The immigration team at Lippes Mathias LLP is available and eager to be of assistance to you in these matters. For further guidance on this process, contact Eileen M. Martin (emartin@lippes.com) or Elizabeth M. Klarin (eklarin@lippes.com).

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