



# Visa Insights

*For Employers, In-House Counsel, HR Managers and Employees:  
Immigration News You Can Use*

*Visas for Work*

*Visas for Life*

November 14, 2008

## Period of Stay Increased for NAFTA Professional Workers from Canada and Mexico

The Trade-NAFTA (TN) nonimmigrant category allows certain qualified Canadian and Mexican professionals to work and live in the United States. Until recently, such workers were limited to periods of stay of one year. In October, USCIS announced a final rule that changes the initial period of admission of TN workers from one to three years and allows for extensions in additional increments of three years.

To qualify as TN professionals, workers must have a bachelor's degree or appropriate professional credentials and work in certain specified fields pursuant to NAFTA. These fields include:

<ul style="list-style-type: none"> <li>• Accountants</li> <li>• Architects</li> <li>• Economists</li> <li>• Engineers</li> <li>• Lawyers</li> <li>• Management Consultants</li> <li>• MEDICAL PROFESSIONALS             <ul style="list-style-type: none"> <li>○ Dentist</li> <li>○ Dietitian</li> <li>○ Medical Laboratory Technologist</li> <li>○ Nutritionist</li> <li>○ Occupational Therapist</li> <li>○ Pharmacist</li> <li>○ Physician</li> <li>○ Physiotherapist/Physical Therapist</li> <li>○ Psychologist</li> <li>○ Recreational Therapist</li> <li>○ Registered Nurse</li> <li>○ Veterinarian</li> </ul> </li> <li>• Foresters</li> <li>• Land Surveyors</li> <li>• Landscape Architects</li> </ul>	<ul style="list-style-type: none"> <li>• SCIENTISTS             <ul style="list-style-type: none"> <li>○ Agriculturist</li> <li>○ Animal Breeder</li> <li>○ Animal Scientist</li> <li>○ Apiculturist</li> <li>○ Astronomer</li> <li>○ Biochemist</li> <li>○ Chemist</li> <li>○ Dairy Scientist</li> <li>○ Entomologist</li> <li>○ Epidemiologist</li> <li>○ Geneticist</li> <li>○ Geochemist</li> <li>○ Geologist</li> <li>○ Geophysicist</li> <li>○ Horticulturist</li> <li>○ Meteorologist</li> <li>○ Pharmacologist</li> <li>○ Physicist</li> <li>○ Plant Breeder</li> <li>○ Poultry Scientist</li> <li>○ Soil Scientist</li> <li>○ Zoologist</li> </ul> </li> </ul>
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<ul style="list-style-type: none"> <li>• Hotel Managers</li> <li>• Librarians</li> <li>• Range Manager/Conservationist</li> <li>• Sylviculturist</li> <li>• Urban Planner</li> <li>• Vocational Counselor</li> <li>• TEACHERS <ul style="list-style-type: none"> <li>○ College</li> <li>○ Seminary</li> <li>○ University (Professor)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Scientific Technician/Technologist</li> <li>• Technical Publications Writer</li> <li>• Social Worker</li> <li>• Research Assistants</li> <li>• Mathematicians</li> <li>• Graphic Designers</li> <li>• Industrial Designers</li> <li>• Interior Designers</li> <li>• Systems Analysts</li> <li>• Disaster Relief Insurance Claims Adjusters</li> </ul>
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Canadian citizens can apply for TN status at a U.S. port of entry by submitting relevant documentation to a U.S. Immigration Officer. Mexican citizens must apply at a U.S. consulate and must fill out a nonimmigrant visa application and supplement, submit the required documentation, and undergo a visa interview with a consular officer. As nonimmigrants, all TNs must show that their stay will be temporary, with a “reasonable, finite end” that does not equate to an intent to immigrate to the United States. Spouses and children of TNs may accompany or follow the TN to the United States in TD status and are also now admissible for three years. Although they cannot work while in the United States, they are permitted to study.

### [Employers Get Guidance on “No-Match” Letters from Social Security](#)

Federal regulations (8 CFR § 274a) set forth employer requirements to verify the employment eligibility of employees and penalties for failure to comply. Under these regulations, employers must fill out and retain I-9 forms for their employees after requesting and inspecting their identifying documents. Employers who fail to follow these procedures or who *knowingly* hire, recruit, or refer for a fee unauthorized aliens for employment (or knowingly continue to do so) may be subject to both criminal and civil sanctions (including substantial fines of up to \$16,000 per employee for repeat offenders). In August, 2007, the Department of Homeland Security (DHS) issued a final rule stating that an employer’s receipt of a “no-match” letter from the Social Security Administration (SSA) may impute “constructive knowledge” that its employees are unauthorized for employment, and outlined certain “safe-harbour” steps an employer must take in order to shield itself from criminal or civil liabilities under the regulation. “No-match” letters are notifications that an employee’s identification information submitted by their employer do not match SSA records (i.e., the name and Social Security number do not match).

On October 10, 2007, the U.S. District Court for the Northern District of California issued a preliminary injunction, preventing enforcement of the rule until DHS provided clarification of the impact on employers. In response, on October 23, 2008 DHS issued a Supplemental Final Rule which provided guidance for employers who receive “no-match” letters. This rule explained the background and reasoning behind the “no-match” rule but made almost no substantive changes. However, until the court dissolves the preliminary injunction, the SSA and DHS may not legally enforce the final rule (websites for both Immigration and Customs Enforcement – ICE – and the SSA confirm this). *If*, however, the court finds DHS’ October 23 rule satisfies its initial order and dissolves the injunction, employers will be subject to the following requirements when they receive a “no-match” letter from the SSA, or will be found to have knowingly employed unauthorized aliens in violation of 8 CFR § 274a:

1. After receipt of a “no-match” letter, an employer must check its records see if the discrepancy is the result of a clerical error on its part. If such is the case, the employer must correct the error and inform SSA of the correct information, and verify that the employee’s name and Social Security number match SSA records. The employer must keep a record of the new verification and store it with the employee’s Form I-9. These steps must be completed within 30 days of receipt of the “no-match” letter.
2. If the employer determines that the discrepancy is not due to its clerical error, it must ask the employee to confirm that the name and Social Security number in its records are correct. If not, the employer must correct the error (as outlined in step 1). If the employee states that the records are correct, the employer must immediately request that the employee resolve the discrepancy with SSA. The employee must resolve the discrepancy within 90 days of the employer’s receipt of the “no-match” letter.
3. If, within 90 days, the employer does not verify that the employee’s name and Social Security number match SSA records, the employer must re-verify the employee’s employment authorization and identity (i.e., complete a new I-9 and check all documents). The employer has three additional days to do this (93 days from the receipt of the initial “no-match” letter), and *cannot accept* for the re-verification process any document containing or referring to the disputed Social Security number or alien number referenced in the “no-match” letter.

SSA normally sends out “no-match” letters to employers once a year, but has not done so this year, presumably because of the injunction issued by the federal court in California. However, if the court dissolves the injunction, enforcement of the new rule will have a substantial economic impact on both large and small businesses.

### [Did You Know?](#)

At a recent conference for immigration lawyers, a USCIS representative said the agency often reviews MySpace and/or Facebook pages on the Internet prior to conducting adjustment of status interviews based on marriage petitions to help determine whether the couple has entered into a *bona fide* marriage.

Source: Adam Ketcher, *For the Beneficiaries: Licenses, Taxes & The Ancillary Considerations To Holding Immigration Status in the U.S.*, ILW.com.

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