

USCIS Issues Guidance on TN Nonimmigrant Status for Economists

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Background

On December 17, 1992, the presidents of the United States and Mexico, and the prime minister of Canada entered into the North American Free Trade Agreement (NAFTA). NAFTA created “special economic and trade relationships” between these countries. Under NAFTA, the TN nonimmigrant classification is available to Canadian and Mexican citizens to temporarily enter the United States to work in certain professional occupations. These professional occupations are laid out in NAFTA’s Appendix 1603.D.1. to D.3, and the minimum requirements for TN nonimmigrant status are codified in Section 214.6 of Title 8 of the Code of Federal Regulations. Pursuant to Section 214.6, the beneficiary of TN nonimmigrant classification must not only demonstrate that (1) he or she is a citizen of Canada or Mexico, but must also demonstrate that (2) his or her profession qualifies under the regulations, (3) the position he or she will occupy in the United States requires a NAFTA professional, (4) he or she has a full-time or part-time offer of employment with a United States employer, and (5) he or she has the qualifications to practice in the profession in question.

One of the professions delineated in [NAFTA’s Appendix 1603.D1 to D.3](#) is that of an “economist,” which requires a baccalaureate or licenciatura degree. NAFTA does not provide a specific description of what an economist does, what professions would be considered economists, or the functions of an economist. This lack of guidance has resulted in inconsistent adjudications.

The Policy Memorandum

To provide guidance, USCIS issued a [policy memorandum](#) on November 20, 2017. This memorandum clarifies who qualifies as an economist, aligning its standards with those of the U.S. Department of Labor’s (DOL) Standard Occupation Classification (SOC) system—a federal statistical standard used by federal agencies to classify workers into occupational categories for the purpose of collecting, calculating, or disseminating data.

USCIS identifies two broad focus areas of economists: (1) microeconomics (the analysis of “the behavior of individuals and firms with the aim of understanding the relationships between supply and demand”) and (2) macroeconomics (the analysis of “aggregated indicators to determine how different sectors of the economy relate to each other”). According to USCIS, in addition to these two focus areas, “economists may apply economic analysis to issues in a variety of fields, such as labor, international trade, development, econometrics, education, health, and industrial organization, among other fields.” The [SOC system](#) defines an economist as an individual who conducts research, prepares reports, or formulates plans to “address economic problems related to the production and distribution of goods and services or monetary and fiscal policy.” Additionally, it states that economists may “collect and process economic and statistical data using sampling techniques and econometric methods.”

USCIS distinguishes that the SOC definition for economists specifically excludes market research analysts and marketing specialists. As such, “persons who are engaged primarily in activities associated with market research analysts and marketing specialists, as described in SOC and the Bureau of Labor Statistics’ Occupational Handbook (OOH), do not qualify for the TN nonimmigrant classification as an economist.”

USCIS recognizes that financial analysts and economists are related occupations and that there may be some overlap in job duties performed. However, [USCIS also distinguishes](#) that “financial analysts primarily conduct quantitative analyses of information affecting investment programs of public or private institutions,” as provided by the DOL’s SOC classification. As such, USCIS, in an effort to align with the SOC, has advised that since “economists and financial analysts are two separate occupations,” financial analysts do not qualify for the TN nonimmigrant classification as economists.

In light of this new guidance, employers may want to review the job duties of Mexican and Canadian citizens they intend to hire in the United States in the TN Economist category.

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