

## Immigration

### Fewer Professions Now Qualify for NAFTA-Related Visas

U.S. Citizenship and Immigration Services has narrowed the scope of professions that can be considered an economist for purposes of obtaining a TN visa.

TN visas are reserved for professionals from Canada and Mexico, but they only apply to a specific list of professions. “Economist” is one of them.

There have been “inconsistent adjudications” over whether professions such as financial analysts, market research analysts, and marketing specialists qualify for the visas, the USCIS said. According a policy memorandum the agency released Dec. 18, they don’t qualify.

“This memo is clearly a continuing effort from the administration to limit the number of foreign nationals that can come into the country, in any way that they can do that,” Robert Cohen of Porter Wright in Columbus, Ohio, told Bloomberg Law Dec. 19.

“Interpreting the definition of an economist as narrowly as this memo does” is “clearly an effort to restrict people from using that category,” said Cohen, who serves as chairman of the American Immigration Lawyers Association’s USCIS Benefits Liaison Committee.

“USCIS issued the policy to clarify that a person’s primary work activities, not their job title, is what determines whether the person qualifies for TN nonimmigrant status as an economist; professional economists requesting TN status must engage primarily in activities consistent with the profession of an economist,” agency spokeswoman Carolyn Gwathmey said in a Dec. 19 email to Bloomberg Law.

**Part of NAFTA Negotiations?** TN visas are a product of the North American Free Trade Agreement, which is currently under review. The entire agreement is up for renegotiation, although so far there’s been little talk of what would happen to the visas in the new NAFTA.

Senate Judiciary Committee Chairman Charles Grassley (R-Iowa) in October wrote to U.S. Trade Representative Robert Lighthizer, asking that TN visas be part of negotiations over the trade deal.

The visas allow for an “uncapped and under-recognized pool of high skill employees” that could reach 100,000 workers in the U.S., Grassley said in the letter. These individuals “could negatively affect U.S. workers in certain industries that already rely heavily on foreign workers,” he said.

Since fiscal year 2010, the USCIS has received 40,926 TN petitions. Of those, 7,138 have gone to professionals

in economics, according to data provided to Bloomberg Law Dec. 19.

The total number of TN visa holders is larger, as Mexicans mostly obtain their visas through U.S. consulates, while Canadians mostly obtain theirs from Customs and Border Protection at ports of entry, the USCIS said. USCIS petitions largely are filed when someone is extending his or her stay in the U.S. or changing to TN status from another visa classification, the agency said.

**Narrowing of Visas** The USCIS’s new policy further narrows who qualifies for the visas. The move comes as the agency continues to implement President Donald Trump’s Buy American and Hire American executive order, which has resulted in additional scrutiny of employment-based visas in general.

“As required under the Buy American and Hire American Executive Order, USCIS is reviewing all of its employment-based visa classifications to create higher wages and employment rates for U.S. workers and to protect their economic interests by rigorously enforcing and administering our immigration laws,” Gwathmey told Bloomberg Law.

In order to qualify as an economist for purposes of the TN visa, the worker’s primary duties must match up with those of the profession, the USCIS said in the memorandum. The agency relied on the Labor Department’s Standard Occupational Classification system, which differentiates between economists and market research analysts and marketing specialists.

There is some overlap between financial analysts and economists, but the former “primarily conduct quantitative analyses of information affecting investment programs of public or private institutions,” the USCIS said.

“This memorandum supports the EO by ensuring we are not granting TN classification to those who claim to be ‘Economists’ but who do not in fact meet the eligibility requirements for such classification under NAFTA,” Gwathmey said. “USCIS will continue to review the TN classification, and every other employment visa program, to ensure that the laws are faithfully enforced and American workers are protected.”

But Cohen questioned what the USCIS is trying to accomplish by restricting the use of TN visas. “Are there that many unemployed economists in the United States that we have to protect their jobs?” he asked.

Although there aren’t many TN visa holders affected by the memorandum, the consequences for those who are—and the businesses that employ them—could be severe, Cohen said. “Every case is a little bit different,” he said, so workers who qualify for TN visas may not qualify for other temporary work visas, such as H-1B specialty occupation visas or L-1 intracompany transferee visas.

If it becomes more difficult for businesses to hire foreign workers, “companies can’t grow and can’t be flexible to meet their needs,” Cohen said.

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