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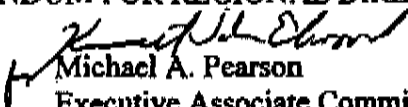
Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

MAY 25 2001

MEMORANDUM FOR REGIONAL DIRECTORS

FROM:


Michael A. Pearson
Executive Associate Commissioner
Office of Field Operations

SUBJECT: Denial of Applicants for Admission under the North American Free Trade Agreement (IN 01-11)

This memorandum is being issued as a revision of Chapter 15.5 of the Inspector's Field Manual (IFM) to clarify procedures relating to the denial of applicants for admission under the provisions of the North American Free Trade Agreement (NAFTA).

There has been confusion regarding the procedure for review of the immigration officer's decision to refuse admission to a Canadian citizen applying for Trade NAFTA Professional (TN) under the NAFTA provisions. There is no petition requirement for classification of a Canadian citizen as a TN and, therefore, no appeal rights extend to the employer seeking the services of the alien. Pursuant to regulation at 8 CFR 214.6 (e)(2), the applicant must present documentation sufficient to satisfy the immigration officer at the time of application for admission that the applicant is seeking entry to engage in business activities at a professional level and that the applicant meets the criteria to perform at such a professional level. There is no appeal at the time of application for admission provided under regulation or under Chapter 16 of the NAFTA.

Chapter 15.5 of the IFM, drafted prior to the implementation of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), stated: "In the event a Canadian citizen applying for admission pursuant to NAFTA cannot demonstrate to the admitting officer that he or she satisfies the TN documentary requirements, the Canadian citizen should be offered a hearing before an immigration judge provided the applicant is confident he or she, in fact, meets the requirements pursuant to the NAFTA, Appendix 1603.D.1. The request for a hearing is equivalent to a TN appeal or a reconsideration of the admitting officer's decision." Aliens who do not satisfy the requirements of the TN nonimmigrant category, or any other nonimmigrant

Memorandum for Regional Directors

Page 2

Subject: Denial of Applicants for Admission under the North American Free
Trade Agreement (IN 01-11)

classification, are, therefore, presumed to be immigrants inadmissible under section 212(a)(7)(A) of the Immigration and Nationality Act. The implementation of IIRIRA replaced the hearing before an immigration judge with expedited removal for such aliens and Chapter 15.5 will be revised to reflect that change.

Accordingly Chapter 15.5 section (f) (10) of the IFM is revised to read as follows:

(f) TN Classification as a Professional.

(10) Denial. In the event a Canadian citizen applying for admission pursuant to NAFTA cannot demonstrate to the admitting officer that he or she satisfies the requirements for admission pursuant to the NAFTA, Appendix 1603.D.1, he/she should normally be offered the opportunity to withdraw his/her application for admission. If the inspector believes that the alien is inadmissible under Section 212(a)(7)(A) (intending immigrant) or 212(a)(6)(C) of the Act (seeking admission by fraud or willful and material misrepresentation) and the alien does not wish to withdraw his/her application for admission, the inspector should place the alien into an expedited removal proceeding.

These revisions to the IFM will be incorporated into future releases of the INS Easy Research and Transmittal System (INSERTS). There are no changes to the IFM concerning Mexican TN procedures.

Should you have any questions regarding this memorandum, please contact Joyce Broughman, Office of Inspections, at 202-514-5573.