

Hotel Business Review

Hospitality Law

How Your Hotel Can Benefit From the Free Trade Agreement

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Mr. Wildes

As the weather outside turns colder and flakes of snow begin to fall, hoteliers of winter resort destinations may be wondering how to meet their staffing needs.

Since it is not always possible to only hire U.S. citizens, your human resource personnel may need to look outside of our borders for qualified non-citizen workers.

One simple solution is the use of the helpful Trade NAFTA (TN Visa) which allows our brothers and sisters from Canada and Mexico to work legally in the United States with surprisingly little effort. This visa was designed to accommodate the mutually-supporting relationship it has with the citizens of those countries and facilitate the employment of its citizens in certain occupations.

The TN visa classification has proven very useful for all treaty participants, and it is an extraordinarily effective tool for the employment of qualified Canadian and Mexican workers by U.S. companies.

Creation of the TN Visa

The TN visa was first introduced in 1993 as a means to ease trade restrictions between Canada, the United States and Mexico. It has proven to be an extremely flexible tool and is useful to U.S. employers as it expanded the list of working tasks for which Canadians and Mexicans can enter the U.S. and work. Citizens of these two neighboring countries, (not including landed immigrants or permanent residents), who are engaged in activities characterized as "professional", may be eligible for TN status. This category is similar to the "H-1B Specialty Occupation" nonimmigrant category, except that there is no annual numerical limit on how many individuals can come here to work, there is no limit on how long they can stay, and generally, the TN category covers a broader range of professional occupations. Recently, the period of time of the primary entry of TN visa holders was expanded to an initial period of three years and requests for extensions of their stay may now be granted in three year increments as well.

Further, the TN visa's flexibility includes permission for the spouse and unmarried children to accompany or follow a TN principal to America. While spouses and children are not permitted to work in the U.S., they may reside with the principal worker and attend school here.

Although applicants must show that their intended stay in the U.S. is temporary, TN visas, unlike many other temporary nonimmigrant visa categories in the "alphabet soup" of the U.S. immigration non-immigrant visa world, may apply for extensions of their employment with U.S. employers almost indefinitely. (However, if a U.S. employer does intend to sponsor a TN worker for permanent residence in the United States, it may be preferable to shift such an individual to a more favorable and long term visa category for purposes of facilitating continued stay with the employer, while the process of a permanent residence application is pursued).

Who Qualifies for TN Status?

Eligibility for TN classification applies to individuals who can prove their Canadian or Mexican citizenship and who possess at least a bachelor's degree or "appropriate credential demonstrating status as a professional". The TN visa is applicable to various categories of professionals such as accountants, architects, economists, computer system analysts, graphic designers, hotel managers, restaurant managers, and many others in the hotel industry who need at least a bachelor's degree to perform their professional duties.

In the hotel and restaurant industry, specifically, the employment of a hotel manager or restaurant manager would require a baccalaureate or licenciatura degree in hotel/restaurant management; or a post-secondary diploma or certificate in hotel/restaurant management; and three years of documented experience in hotel/restaurant management. These are degrees which preliminarily can be earned at a U.S., Canadian or Mexican educational institution by foreign students.

While self-employment is prohibited to the TN visa holder, "management consultants" are a permitted category of TN worker and these individuals may serve as independent consultants or employees of consulting firms under contract to U.S. hotels, and should be salaried.

How to Obtain the TN Visa

For Canadian citizens, who reside in Canada, one tremendous advantage of the NAFTA visa is that no advance petition approval from U.S. Citizenship and Immigration Services (USCIS) is necessary. This means that qualifying Canadians do not need a visa as a NAFTA professional, although a visa can be issued to qualified TN visa applicants, upon request. As such, Canadian citizens without a TN visa may simply present documentation at the border upon entry to the United States. Especially when time is of the essence, this proves to be a very valuable tool.

Canadian citizens residing outside of Canada with a non-Canadian spouse and/or child are, however, required to apply for a visa so that the non-Canadian family members may apply for a visa to accompany the NAFTA professional as a TD visa holder.

Mexican citizens requiring TN visas must apply for a TN visa stamp at a U.S. consular post. An interview with the consulate is required for most visa applicants between the ages of 14 to 79. In limited situations, even individuals younger than 14 or older than 79 may be required to attend a personal interview.

Each applicant for a TN visa must collect and provide the documentation including:

- Form DS-160, the all-inclusive Nonimmigrant Visa Application;

- Passport which is valid for travel to the U.S. with a expiration date that extends at least six months beyond the applicant's intended period of stay;
- Photographs;
- A Letter of Employment from the applicant's prospective U.S. employer which indicates:
 - That the position for which the individual will be coming to the U.S. to work, is one that requires the employment of a person in a professional capacity, consistent with NAFTA requirements;
 - A detailed description of the employment including the type of activity in which the applicant will be engaged, the anticipated length of stay, the beneficiary's educational qualifications or appropriate credentials demonstrating professional status, evidence of compliance with all federal and/or state regulations/laws, if applicable, and arrangements for the method of payment of the beneficiary's salary;
- Proof of licensure and professional memberships, where applicable;
- Diploma (if the degree is from Canada or Mexico, it must be evaluated); and
- Other documentation as may be reasonably required to prove eligibility for TN status.

Once in the U.S., the TN visa holder can apply for an extension of stay at the USCIS Service Center of the Department of Homeland Security.

Is the TN Visa Right for Your Business?

When considering hiring professional workers, and especially when H-1B specialty occupation worker category visas are not available, the TN visa category provides a useful and timely option for employers in the hotel industry, which routinely employs accountants, hotel restaurant managers, and attorneys, as well as many other individuals who could easily fit the parameters of this visa category and enter the United States to assume work on an expeditious basis.

Those of us who have followed the developments in TN visa eligibility since the passage of the NAFTA Agreement and the creation of the TN visa, have seen an expansion of the range of applicants in this category over the years, including a permutation of the visa for Australians, who benefit from the E-3 visa and Singaporeans and Chileans who, also subject to Free Trade Agreements, qualify for special treatment for the H-1B (specialty occupation) visa categories.

Especially for large resorts, where staff needs can exceed hundreds, the TN visa provides a means for easily hiring qualifying Canadian and Mexican workers. Since a satisfied vacationer can be your best source of referral, it is important to make sure that all of your staffing needs are properly met.

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