

*Texas New Mexico Oklahoma AILA Chapter
Spring Conference 2017
South Padre Island, Texas*

**Status of Trade Agreement Visas – H1-B1, E-1/E-2, NAFTA.
What is the state of the nation with regard to our trade agreements?**

I. Parity Between Mexico and Canada

Canada – Port of Entry Issues:

- AILA Members Report Cases Where:
 - Degree Equivalency Required
 - Payments to be Stated as Annual Salary
 - Detailed Job Descriptions (duty time percentages)
- Registered Nurses – No Policy Change. See AILA Doc. No. 16112144 for additional practice tips
- Choice of POE still relevant

Mexico:

- Potential Interview Delays – See AILA Doc. No. 17032333. March 6, 2017 DOS Cable recommending Posts to conduct no more than 120 visa interviews per consular adjudicator/per day
- TN Visa Period of Admission. 9 FAM 403.9-4(E) has been update to reference the correct maximum period of admission of 3 years. However, it appears beginning Nov. 2016, certain Posts (including Mexico City and Monterrey) will no longer show a notation with the proposed period of approved employment. According to AILA/DOS Liaison Meeting on October 6, 2016, FAM update will uniform practice.
- Re-adjudication of TN Visa / Nonimmigrant Intent at POE. Reports of visa cancellation for clients reaching long periods (approx. 10 years) on TN Visa status
- More strict review of hybrid professions (“Sales Engineer”, “Economist / Manager”, “School Psychologist” “School Recreational Therapist”, “University Teacher / Coach”). See (8 CFR) Part 214 appendix 1603.D.1, 9 FAM 402.17-4(A) Member of a Profession
- Choice of POE may determine period of admission or additional document requests
- Automatic Visa Revalidation – Most POEs now seem to understand AVR. However, watch out for B1/B2 as Default Entry Classification. Clients must ask

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officer to manually change visa classification, especially if officer ran passport (not expired visa) to verify client's identity. Deferred Inspection Sites or CBP Counsel, while understanding, may not be able to correct entry classification errors

II. How to calm investor clients

- No evidence Congress is going to withdraw from NAFTA
- Recent News: Trump administration seeks modest changes to NAFTA (Letter from U.S. Trade Representative to Congress addressing taxes, tariff and trade disputes. No mention of TN Visas or withdrawing from NAFTA. Lawder, D. (March 30, 20-+17). Trump to seek tariff 'snap-back', tax equality in NAFTA revamp: letter. <http://www.reuters.com>

III. What you need to know when applying at USCIS, Ports of Entry and US Consulates

USCIS

- Regardless of Visa Classification (TN or E), review applicant's travel history at <https://i94.cbp.dhs.gov> before filing EOS. Even if you document CBP error, CIS may deny extension of status even if CBP error is evident

TN Visa

- Licensed professions (CPAs, Attorneys, Architects, etc.). 9 FAM 402.17-4(B) License Not Required. However, USCIS may issue RFE requesting "... evidence showing that the beneficiary holds an unrestricted state license, registration or certification which authorizes him her to fully practice the profession and to be immediately engaged in the occupation in the state of intended employment"

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- Management Consultant – Challenging Extensions of Status, especially for companies with few managerial employees.

RFEs asking for:

- Proof consultant has improved organization structure organization or profit
- Evidence consultant is actually needed for the requested period of employment
- Proof the position is temporary

E-2 Visa

- Bona Fide Enterprise & Marginality continue to be most relevant factors for EOS

Consulate

TN Visa

- Acceptable evidence of a bachelor's degree equivalent in Mexico (*licenciatura*) can be either a "titulo" or a "cedula profesional." However, the "titulo" must have a stamp from the Mexican Secretary of Education (SEP) to be valid. AILA Doc. No. 16100705. AILA/Department of State Liaison Meeting, October 6, 2016.

E-2 Visa

- Changing Filing Requirements (page limits, binder size, etc.). As of May 16, 2016, the U.S. Consulate General in Ciudad Juarez will not be accepting E2 visa applications exceeding 70 pages (maximum). The following documents do not count towards the 70-page limit: Forms DS-160, DS-156E, G-28, appointment confirmation, civil documents, copy of passport bio-page, copy of previous visa, tabs/dividers.

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- Initial Application: Substantial Investment and Proportionality are key factors
- Renewals: Marginality will be very relevant

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U.S. Consulate Ciudad Juarez, Mexico

- Best practices for E2 application preparation to speed consular processing:
 - ✓ Demonstrating the source and flow of invested funds
 - ✓ Financial documents that make the case for marginality
 - ✓ Business plans for first-time applicants
 - ✓ Documents to demonstrate business is real and operating
- Logistical aspects of applying or renewing an E2 visa in Ciudad Juarez
 - ✓ Validity of I-94s and the need to renew;
 - ✓ Using the Applicant Service Center – You don't have to come to Juarez!
 - ✓ DHL return times

Port of Entry

TN Visa

- AILA Member Reports
 - Period of Admission – No Visa Annotation / Lack of Uniformity

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- Place of Employment Inquiries (Employee entering at land POE outside region annotated as place of Employer's location)
 - Fraud Investigations – Proof of Compensation (paystubs requests)
 - Nonimmigrant Intent – I-94 Reissuance (for shorter POA) or Visa Cancellation
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- Choice of Port of Entry (Peace vs Pearson, Laredo vs Hidalgo, Airport vs. Land)

E Visa

- Common to see mistakes as to period of admission (passport shows 2-year stamp, but electronic I-94 show a period of admission of one week)
- Subsequent period of admission discretionary (clients may have to apply at consulate)
- Immigrant Intent (visa renewal *prima facie* evidence?)
- Additional Documentation Required Upon Entry