



STATUS of TRADE AGREEMENT

VISAS

Texas New Mexico Oklahoma AILA Chapter
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TOPICS

- A. Ciudad Juarez Update**
- B. Parity between Canada and Mexico**
- C. How to Calm Investors**
- D. Applying at USCIS, POEs, and U.S. Consular Posts**
- E. Review of Nafta and Trade Agreements**
- F. Interview Waiver Program**
- G. Visa Revocations - Prudential/Provisional**
- H. Heightened/Extreme Vetting**

Cd. Juarez Consulate

- * Staffing
- * Process Update - Impact of Heightened Vetting
- * Communications
- * E visa Page Limits
- * TN Annotation - No longer show approved period of employment, Hybrid Professions
- * Part-time - Cross Border

Parity - What?

- * Visa Exemptions for Canada
- * North and South Borders for TN
- * Northern Border L
- * TN Developments - 214(b)...longevity, job duty percentages, degree 9 FAM 402.17-5(C)
- * TN Advanced Nurses - AILA Doc. 16112144 3/17/17
- * TN stamped Titulo by SEP or Lic. AILA Doc. No. 16100705 10/2/16

INVESTOR Worries... well

- * Israel E-2 maybe by 4th quarter of 2017
- * Grassley Letter to DHS and DOS on Es - attack
- * **Reply Letter** [https://www.judiciary.senate.gov/imo/media/doc/2015-06-19%20DHS%20to%20CEG%20\(E-2%20Visas%20ENCLOSURES\).pdf](https://www.judiciary.senate.gov/imo/media/doc/2015-06-19%20DHS%20to%20CEG%20(E-2%20Visas%20ENCLOSURES).pdf)
- * Vetting of Es in leaked Executive Order Draft
- * EB-5 Fraud Concerns
- * Self Audits - Prepare for FDNS

Status of Trade Agreements - 1

Treaties in Force

<https://www.state.gov/s/l/treaty/tif/index.htm>

Trade Agreements

<https://ustr.gov/trade-agreements/free-trade-agreements/singapore-fta>

NAFTA - “Trade deal, I guess you’d call it, the worst trade deal ever signed in the history of our country – it’s cleaned out vast portions of our manufacturing businesses and more.” President Trump

Status of Trade Agreements - 2

March 23, 2017 The Trump administration is preparing new executive orders to re-examine all 14 U.S. free trade agreements and review government procurement policies to aid American companies, two administration officials said. ..The orders to review existing trade deals and public procurement policies would be largely symbolic, as the administration has already announced its intention to renegotiate NAFTA, with plans to formally notify Congress of its intention to launch talks in the coming weeks.

The U.S. bilateral and multilateral trade deals cover these countries: Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Singapore and South Korea.

Status of Trade Agreements - 3

NAFTA - The text of NAFTA was signed on December 17, 1992. It went into force on Jan. 1, 1994. Article 2205 of NAFTA provides that a party may withdraw from the Agreement six months after it provides written notice of withdrawal to the other parties. (Art. 2205)

So what are the big losses if the US withdraws from NAFTA

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1. No TN or TD. Note Bs were not supposedly expanded.
2. No L-1 at ports of entry on the northern border and PCOs for Canadians.
3. No Es for Mexicans and Canadians since NAFTA did supersede all CFTA provisions and the CFTA was repealed see below. The State Department E treaty list indicates that Canada's E treaty went into effect on January 1, 1993. <https://travel.state.gov/content/visas/en/fees/treaty.html>

Status of Trade Agreements - 4

Although NAFTA was approved by Congress, it is technically not a treaty. Rather, it is a congressional-executive agreement approved by a majority vote of each house of Congress, as are the World Trade Organization (WTO) agreements. NAFTA was put in place pursuant to the Trade Act of 1974, which gives the president authority to negotiate agreements dealing with tariff and non-tariff barriers. Section 125 of the 1974 Act gives the right to terminate and withdraw **solely to the president**, after giving appropriate notice (six months, as specified in NAFTA). NAFTA was negotiated under the fast-track authority of the Omnibus Trade and Tariff Act of 1988, which made the termination and withdrawal provisions of Section 125 of the 1974 Act applicable to NAFTA. Trade Act of 1974, Public Law 93-618 as amended), P.L.114-125, §125 (available at <https://legcounsel.house.gov/Comps/93-618.pdf>)

Status of Trade Agreements - 5

9 FAM 402.10-5 H-1B1 FREE TRADE AGREEMENT NONIMMIGRANT PROFESSIONALS

The President signed free trade agreements (FTAs) with *Chile* and Singapore on September 3, 2003. The FTAs with *Chile* and *Singapore* were authorized by Congress in Public Law 108-77 and Public Law 108-78, respectively. Both agreements became effective on January 1, 2004.

Article 21.9 (Chile and Singapore) allows six months notice to terminate.

Status of Trade Agreements - 6

9 FAM 402.9-8 REQUIREMENTS FOR E-3 VISAS

The E-3 visa classification ("treaty alien in a specialty occupation") was the result of Public Law 109-13, entitled "The Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005" (May 11, 2005). The new law added paragraph (iii) to INA 101(a)(15) (E), establishing a visa classification for Australians in specialty occupations.

Article 21.9 provides for six months notice to terminate.

Bolivia History - E-2 Withdrawal

- * Treaty not a Bilateral Trade Agreement
- * Bolivia gave notice and effective June 10, 2012, the treaty was terminated.
- * Following termination, for another 10 years - all covered investments existing at time of the termination could support ongoing E-2 applications (ending June 10, 2022).

End of TPP Negotiations

Jan. 23, 2017 - Presidential Memo Withdrawal from Trans Pacific Partnership

<https://www.whitehouse.gov/the-press-office/2017/01/23/presidential-memorandum-regarding-withdrawal-united-states-trans-pacific>

It is the policy of my Administration to represent the American people and their financial well-being in all negotiations, particularly the American worker, and to create fair and economically beneficial trade deals that serve their interests. Additionally, in order to ensure these outcomes, it is the intention of my Administration to deal directly with individual countries on a one-on-one (or bilateral) basis in negotiating future trade deals.

Interview Waiver Program (IWP) LIVES

Section 9 EO 13780 - required the immediate suspension of the Visa Interview Waiver Program - DOS Liaison Minutes 4/12/17 AILA Doc. No. 17041234 (well not quite) (not the Visa Waiver Program either)

The following must now have in person interview that had been covered by IWP:

- * Any applicant whose visa expired more than 12 months prior to the date of application
- * Any first time Brazilian applicant aged 14 or 15 or between 66 and 79
- * Any first time Argentina applicant aged 14 or 15 or between 66 and 79
- * **Obama Administration EO 13597 expanding IWP - allowed 48 months renewal**

Heightened Vetting of Visa Applicants

**Executive Order 13780 Revised (EO) on Travel -
March 6, 2017**

**Protecting the Nation From Foreign Terrorist Entry
into the United States**

Presidential Memo - March 6, 2017

**Memorandum for the Secretary of State, the
Attorney General, and the Secretary of Homeland
Security**

Presidential Memo

Sec. 2. Enhanced Vetting Protocols and Procedures for Visas and Other Immigration Benefits. The Secretary of State and the Secretary of Homeland Security, in consultation with the Attorney General, shall, as permitted by law, implement protocols and procedures as soon as practicable that in their judgment will enhance the screening and vetting of applications for visas and all other immigration benefits, so as to increase the safety and security of the American people. These additional protocols and procedures should focus on:

- (a) preventing the entry into the United States of foreign nationals who may aid, support, or commit violent, criminal, or terrorist acts; and
- (b) ensuring the proper collection of all information necessary to rigorously evaluate all grounds of inadmissibility or deportability, or grounds for the denial of other immigration benefits.

Heightened Vetting - Not yet?

The new directives (CABLE 23338, CABLE 24324, CABLE 24800, and CABLE 25814)

AILA DOS LIAISON - April 12, 2017 17041234
Interagency discussing and vetting - not concluded.

Hawaii Decision March 15

- * Initial directives were modified after a U.S. District Court in Hawaii suspended implementation of certain sections of President Trump's revised executive order regarding travel (EO) on **March 15, 2017**, which included those sections of the EO halting visa issuance for individuals from Iran, Libya, Somalia, Sudan, Syria, and Yemen as well as the suspension of travel for refugees to the U.S. for 120 days. **While the new directives do not suspend visa *issuance* for any individuals from any particular country, they put into place heightened scrutiny for certain “populations” deemed to “warrant increased scrutiny,” which certainly include nationals of the six countries listed in the EO (plus Iraq). Secretary Tillerson also stated that these directives are preliminary, which suggests that the new protocols are merely a first step in what the President has termed, “extreme vetting.”**

Heightened Vetting? - 1

- * Any individual deemed to have ties to ISIS or other terrorist organizations, or who has ever been present in an ISIS-controlled territory (presumably Iran, Iraq, Libya, Somalia, Sudan, Syria, or Yemen), will be subject to a mandatory social media review.
- * Individuals with passports from Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen are required to undergo heightened screening.
- * Posts are directed to limit the number of visa interviews per consular officer per day in order to allow the consular officer to conduct a more thorough review. (150 to 120)

Heightened Vetting? - 2

- * The applicant's travel history over the last 15 years;
- * The names of any siblings/children/former spouses not recorded in the DS-160/260 or NIV/IVO case notes;
- * The applicant's addresses during the last 15 years, if different from the applicant's current address;
- * Applicant's prior passport numbers;
- * Applicant's prior occupation(s) and employers (plus a brief description if applicable) looking back 15 years;
- * All phone numbers used by the applicant in the last five years;
- * All email addresses and social media handles used by the applicant in the last five years.

Prudential Revocation - DUI

DOS Guidance Directive 2016-03 on Visa Revocation AILA Doc. No. 16100409 | Dated September 2, 2016

Policy implemented on Nov. 15, 2015 9 FAM 403.11-3(A)

- * Consular Officers to prudentially revoke (without determination of admissibility), NIVs of those arrested for or convicted of DUI or DWI or similar arrests or convictions that occurred within previous five years. Not apply if arrest/conviction happened prior to date of visa application and already been assessed within context of visa application. DUI indicates possible ineligibility under physical or mental disorder with associated harmful behavior that may pose threat to property, safety, or welfare of the applicant or others in future under INA 212(a)(1)(A)(iii).
- * Consular officers refer NIV applicants with one alcohol related arrest in the last five years, two or more arrests in the last ten years, or if other evidence suggests an alcohol problem exists to a panel physician.
- * Consular officers can prudentially revoke the visa even if visa holder in U.S.

Prudential/Provisional

AILA DOS Liaison Minutes 17041234 - 4/12/17

Prudential revocations -not take effect until individual departs U.S. This position may protect against impact of **INA §237(a)(1)(B)**, which exposes a revoked visa holder to removal.

22 CFR §41.122(b)- Provisional revocations have same force and effect as a revocation under INA §221(i).

9 FAM 403.11-5(B) (U) Prudential Revocations.

DOS LIAISON

- * DOS VO - There is no legal difference between prudential and provisional revocations. A provisional revocation such as with an EVUS registration could be reversed without requiring a new visa application. 22 CFR 41.122(b)(3) allows automatic revocation of NIVS for those failing to comply with Electronic Visa Update System (EVUS).
- * The vast majority of prudential revocations take effect after departure for those in the U.S. at the time of revocation. Thus, the prudential revocation generally require the alien to apply for a new visa.

INA §212(f)

212(f) Suspension of entry or imposition of restrictions by President

Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, **suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants**, or impose on the entry of aliens any restrictions he may deem to be appropriate. Whenever the Attorney General finds that a commercial airline has failed to comply with regulations of the Attorney General relating to requirements of airlines for the detection of fraudulent documents used by passengers traveling to the United States (including the training of personnel in such detection), the Attorney General may suspend the entry of some or all aliens transported to the United States by such airline.

Travel Ban Revocation - Lazarus

1. 1/27/17 DOS using INA 212(f) and 221(i) and 22 CFR 42.82 all valid immigrant visa provisionally revoked.
2. 1/27/17 DOS immediately suspends visa issuance to nationals of affected countries.
3. 2/1/17 - NVC halts processing of immigrant visas for nationals and dual nationals of designated countries. All Feb. 2017 IV interviews cancelled.
4. 1/27/17 - DOS suspends visa issuance to nationals of affected countries.

Travel Ban Revocation - 2

5. 1/27/17 - DOS provisionally revokes visas under 22 CFR 41.122(b)(2). Provisionally revoked visas subject to reversal and if reversed, the visa immediately resumes validity period of face. 22 CFR 41.122(b)(1).

6. 2/3/17 - Decision of Washington US D Ct - DOS provisional revocation lifted. If visa expired or physically cancelled reapply. Otherwise, CBP can parole or grant documentary waiver (I-193). Global Entry declaration?

7. 3/6/17 - New EO on March 6, 2017 becomes effective March 16, 2017. No visa issued before effective date will be revoked.

8. 3/13/17 - Does not restrict dual nationals if travel on passport of unrestricted country. No effect on LPRs. Can apply for visa in national interest.

PREPARE!!!