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March 7, 1996

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U.S. Immigration and Naturalization Service
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Re: Lifting of I-94s from Approved TN Canadian NAFTA Applicants

Dear Ms. LeFleur:

I would appreciate if you would clarify your agency's position about the following scenario.

A Canadian citizen professional, eg. engineer, is approved in Buffalo, New York, for TN classification and is issued an I-94 for one year to work in Chicago. Some time after the entry, the employer files an I-140 petition, which is approved and forwarded for immigrant visa processing abroad to a U.S. Consular Post.

During the year of authorized TN classification, the alien returns to Canada for a family social function and seeks to reenter at a Port of Entry in Detroit. The inspector, upon learning that an I-140 has been approved, lifts the engineer's approved TN I-94 and refuses him admission. Further, the inspector suggests if the I-140 for the benefit of the engineer is withdrawn, then he may be readmitted.

We respectfully submit that even before the H and L regulations provided for "dual intent", status was not summarily revoked at the border merely because an immigrant visa petition had been approved. Moreover, if an individual was entering solely to continue temporary employment and not to pursue an immigrant visa, the mere filing or approval of an immigrant petition would not automatically trigger refusal.

The US/Canada FTA specifically recognized dual intent for TN's. Dual intent was not carried over into the NAFTA, however, NAFTA regulations at 8 CFR 214.6(b) define a temporary entry as an "entry without the intent to establish permanent residence." In our example, the engineer will leave the U.S. to complete immigrant visa processing abroad. He clearly has no intent to establish permanent residence by seeking to enter as a TN. He does not intend to apply for adjustment of status.

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Therefore, we respectfully submit that a Canadian professional worker who is returning in unexpired approved TN status should not be prevented from returning to complete the temporary employment engagement simply because he is the beneficiary of an approved I-140 petition.

Your guidance on the subject would be most greatly appreciated.

Very truly yours,

WILLIAM Z. REICH
WZR/pcz

U.S. Department of Justice

Immigration and Naturalization Service
HQ 1313-C

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425 Eye Street N.W.
Washington, D.C. 20536

JUN 18 1996

Mr. William Z. Reich
300 Delaware Avenue
Buffalo, New York 14202

Dear Mr. Reich:

This refers to your letter of March 7, in which you state that a Canadian citizen was refused admission as a TN nonimmigrant under the North American Free Trade Agreement (the NAFTA) because he is the beneficiary of an approved I-140, Immigrant Petition for Alien Worker, and, therefore, could not establish that his entry was without the intent to establish permanent residence in the United States. You submit that a TN nonimmigrant may be admitted to the United States to complete a temporary employment engagement even though he or she is the beneficiary of an approved I-140 petition.

This office has oversight for the uniform application of immigration laws, regulations, and statute. It does not determine eligibility for specific nonimmigrant classifications in individual cases. The determination as to whether or not an alien is eligible for admission or extension of stay as a TN professional must be made by the immigration officer at the time the alien applies for admission or extension of stay. Each application must be judged on its own merits. Nevertheless, we can provide you with a very general statement relating to the facts described in your letter.

At the present time, there is no specified upper limit on the number of years a citizen of Canada or a citizen of Mexico may remain in the United States in TN classification as there is with the majority of nonimmigrant classifications contained in section 101(a)(15) of the Act. However, the presumption of immigrant intent under section 214(b) of the Act is applicable to NAFTA professionals under section 214(e) of the Act (unlike that for H and L nonimmigrants who are no longer subject to section 214(b) of the Act). Accordingly, applicants for admission, extension, or readmission as NAFTA professionals will be subject to a determination by the Service of the applicability of section 214(b) of the Act to the applicant.

The fact that an alien is the beneficiary of an approved I-140 petition may not be, in and of itself, a reason to deny an application for admission, readmission, or extension of stay if the

alien's intent is to remain in the United States temporarily. Nevertheless, because the Service must evaluate each application on a case-by-case basis with regard to the alien's intent, this factor may be taken into consideration along with other relevant factors every time that a TN nonimmigrant applies for admission, readmission or a new extension of stay. Therefore, while it is our opinion that under the conditions as described in your letter, a TN nonimmigrant may apply for readmission in the TN classification, if the inspecting officer determines that the individual has abandoned his or her temporary intent, that individual's application for admission as a TN nonimmigrant may be refused.

I trust this response has been of some assistance to you with regard to your question.

Sincerely,

Yvonne M. LaFleur, Chief
Business and Trade Services Branch
Benefits