



December 19, 2017

## Special Immigration Alert

### USCIS Announces Limitation on NAFTA Eligibility in “Economist” Classification

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On December 18, 2017, U.S. Citizenship and Immigration Services (“USCIS”) issued a [news release](#) announcing “clarifying policy guidance” on eligibility standards for qualifying as a TN “Economist” under the North American Free Trade Act (“NAFTA”). The news release links to a policy memorandum titled “[TN Nonimmigrant Economists Are Defined by Qualifying Business Activity](#),” which is dated—and purportedly went into effect on—November 20, 2017 (“Memorandum”).

NAFTA Appendix 1603.D.1 contains a schedule of occupations that are eligible for TN status. If a Canadian or Mexican citizen will enter the United States to work in one of those eligible occupations, he or she is eligible for TN status irrespective of whether he or she qualifies for any other nonimmigrant work authorization. The occupation of “Economist” has been included in Appendix 1603.D.1 since NAFTA was adopted on January 1, 1994. During the past 23 years, the USCIS and its predecessor agency, the Immigration and Naturalization Service, have consistently interpreted the term “Economist” to include any position involving work that was primarily economic or financial.

In its news release, the USCIS admits that NAFTA “does not define the term economist . . . .” Nevertheless, the USCIS has announced that issuing the Memorandum was necessary to address what the agency claims are “inconsistent decisions on whether certain analysts and financial professionals qualify for TN status as economists.” According to the Memorandum, individuals seeking TN classification as economists must engage primarily in activities consistent with the profession of an economist. Individuals who will work primarily in other occupations related to the field of economics, such as financial analysts, marketing analysts, and market research analysts, now are not eligible for TN classification as economists.

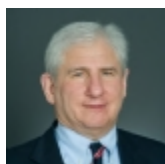
The stealth and informal manner in which this major shift in agency policy was announced is likely to lead to litigation as companies find they cannot extend the status of employees who were admitted in TN status as economists, worked here for years in that capacity, but suddenly no longer qualify as economists under the Memorandum.

This abrupt and major shift also may impact the continued admissibility to the United States of employees working in TN status as economists if U.S. Customs and Border Protection officers find that these employees no longer qualify for TN status after foreign travel, despite approval notices from the USCIS that have not expired.

An organization that employs TN economists should review its workforce to identify these employees and warn them about this shift in USCIS policy and what it means for them and their continued employment. The organization also needs to adopt contingency plans for these employees, such as seeking H-1B status or sponsoring them for permanent residence, if they plan to continue their employment beyond the expiration of their current TN status.

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