

OPERATIONS INSTRUCTIONS OF THE IMMIGRATION AND NATURALIZATION SERVICE
OI 214

Operations Instruction (OI) Section 214.6

OI 214.6 Special requirements for admission extension and maintenance of status for Canadian citizens coming to engage in business activities at a professional level pursuant to the United States- Canada Free-Trade Agreement (FTA).

(a) General. Whether the Canadian citizen is employed by a foreign company or is self-employed, the purpose of entry must be to perform prearranged activities for a United States entity.

(b) Documentation. Although the regulations allow the immigration inspector to accept a letter affirming qualifying information, in questionable cases, the applicant for admission may be required to present licenses, diplomas, degrees, certificates, or membership in professional organizations.

(c) Discussion of professions or occupations contained in Schedule 2 to Annex 1502.1 of the FTA.

(1) Scientists. Entomologists, animal scientists, agriculturist (agronomists), dairy scientists, poultry scientists, and soil scientists are scientists involved in the field of agriculture. All of these occupations require at least a baccalaureate degree for entry into the occupation.

(2) Physicians. Canadian-citizen foreign medical graduates coming to the United States under this provision of the FTA must be coming to engage in teaching and/or research. They may not come to engage in direct patient care. Patient care incidental to teaching and/or research is permissible. Patient care is incidental when it is casually incurred in conjunction with the physician's teaching or research.

To determine if the patient care will be incidental, officers must consider factors, such as the amount of time spent in patient care, whether the physician is paid for services rendered, whether the physician's salary offer is so substantial that incidental patient care is unlikely, and whether the physician is responsible for a regular patient load. Canadian citizen physicians, however, who are graduates of U.S. medical schools may be admitted under this classification for residencies, internships, or direct patient care. Professional status for any Canadian-citizen physician may be demonstrated by the holding of a medical degree, a provincial license, or a license issued by a state of the United States, Guam, Puerto Rico, or the Virgin Islands of the United States.

(3) Registered nurses. Professional status may be demonstrated by a provincial or state license; however, in order to be admitted as a registered nurse, the Canadian citizen must present a permanent state license, a temporary state license, or other temporary authorization to work as a registered or graduate nurse, issued by the State Board of Nursing in the state of intended employment.

Canadian-citizen registered nurses holding temporary state licenses or other temporary state authorization shall not be required to show that they have passed the examination given by the Commission on Graduates of Foreign Nursing Schools (CGFNS). Admission of a Canadian-citizen registered nurse with a temporary license or other temporary authorization should not be limited to the expiration date of either document.

(4) Animal and plant breeders. Breed animals and plants to improve their economic and esthetic characteristics. Both are occupations requiring at least a baccalaureate degree for entry into the occupation.

(5) Forestry occupations. Sylviculturists and foresters plan and supervise the growing, protection, and harvesting of trees. Range managers manage, improve, and protect rangelands to maximize their use without damaging the environment. A baccalaureate in forestry or a related field is the minimum entry requirement for these three occupations.

(6) Scientific technicians/technologists. These occupations do not ordinarily require that the individual possess a baccalaureate; consequently, supporting documentation should be an attestation from the prospective United States employer or the Canadian employer that the individual possesses the skills set forth in Schedule 2.

(7) Disaster relief insurance claims adjusters. To qualify in this occupational category, a Canadian citizen must be employed by an insurance company located in Canada or be an independent claims adjuster who has successfully completed training in the appropriate areas of insurance adjustment for disaster relief claims. This requirement is in addition to the experience or educational requirements set forth in the

regulations. For the purposes of this occupation, a disaster shall be an event declared to be disaster by the president of the United States or pursuant to a state statute or local ordinance, or an event at a site which has been assigned a catastrophe serial number by the Property Claims Service of the American Insurance Services Group, or by an association of insurance companies representing at least 15 percent of the property casualty market in the United States, on the ground that the estimated total amount of insured property damage exceeds \$5 million and represents a significant number of insurance claims.

(8) **Management consultants.** Management consultants provide services which are directed toward improving the managerial, operating, and economic performance of public and private entities by analyzing and resolving strategic and operating problems and thereby improving the entity's goals, objectives, policies, strategies, administration, organization and operation. Management consultants are usually independent contractors or employees of consulting firms under contracts to U.S. entities. They are only salaried employees of U.S. entities to which they are providing their services when they are not assuming existing positions or filling newly-created positions. As salaried employee of such a U.S. entity, they may only fill supernumerary temporary positions. On the other hand, a Canadian citizen management consultant could be coming temporarily to fill a permanent position with a United States management consulting firm. Canadian citizens may qualify as management consultants by holding a baccalaureate degree, by having five years of experience in the field of management consulting, or by having five years of experience in a field of specialty related to the consulting agreement.

(9) **General observations on Schedule 2.** Schedule 2, except for some specific occupations, does not state that a degree in particular field is required for qualification as a TC nonimmigrant. Officers should use good judgment in determining whether a degree in an allied field may be appropriate. Academic degrees which qualify Canadian citizens for this classification are not restricted to degrees awarded by United States or Canadian colleges or universities.

Schedule 2, as set forth in the regulations, has been annotated to indicate, where appropriate, professional credentials may be accepted in lieu of evidence of a degree. The occupations where this is indicated are physician, dentist, registered nurse, veterinarian, lawyer, disaster relief insurance claims adjuster, and management consultant.

The regulations state that to qualify for Schedule 2, the Canadian citizen must possess the minimum of a baccalaureate degree, unless otherwise specified. There is no requirement that the baccalaureate be gained in a four-year academic program. Three-year baccalaureate programs are common in Canadian colleges and universities, and are qualifying for Schedule 2.

(d) Readmission. If a Canadian citizen in this classification applies for readmission with an unexpired Form I-94 and a letter indicating that his/her services are needed in the United States by the same employer for a period of time beyond that authorized on the current I-94, he/she may be admitted for the new period of time and issued a new Form I-94, on remittance of the fee prescribed in the regulations. Alternatively, the Canadian citizen may be admitted for the time remaining on the current I-94, and he/she may apply for an extension of stay with the Service office having jurisdiction over the place where he/she is staying in the United States. If the Canadian citizen applies for readmission with an unexpired Form I-94 and indicates that his/her former employer is to be replaced by a new employer or that he/she has acquired an additional employer(s), then a new Form I-94 should be issued on remittance of the prescribed fee.

(e) Extension of stay. The regulations provide for extensions in increments of one year for Canadian citizens in this classification. There is no limit on the number of extensions, but adjudicating officers should keep in mind that this classification is for temporary entry without the intent to establish permanent residence. As with H-1 and L-1 nonimmigrants, the approval of a permanent labor certification or the filing of a preference petition is not by itself ground to deny a request for extension by a TC nonimmigrant. The B-2 spouse and unmarried minor children of a TC nonimmigrant may be included in the principal's application for an extension of stay.

(f) Spouse and minor children. The B-2 spouse and unmarried minor child or children of a TC nonimmigrant may attend school in the United States on a full-time basis, since such attendance is deemed to be incidental to their purpose for being in the United States.

(g) Change of nonimmigrant classification to TC. Except as limited by section 248 of the Act, a citizen of Canada who is currently in the United States in another valid immigrant classification is not precluded from filing an Application for Change of Nonimmigrant Status (Form I-506) to TC classification. If the principal

Canadian citizen's spouse and unmarried minor child or children have been admitted to the United States B-2 visitors, they should be separately processed on Form I-539 for an extension of stay corresponding to the principal's authorized stay as a TC nonimmigrant. In such a case, they should be issued Forms I-94 if such forms were not received on initial entry.

A Canadian citizen in the United States as an H-1 or L-1 (subject to the five-year limitation for either of these classifications) may be changed to TC classification provided his/her occupation is in Schedule 2 to annex 1502.1. TC classification does not combine with H-1 or L-1 for the purposes of the five-year limitation.

A Canadian-citizen J nonimmigrant subject to the tow-year foreign residency requirement of section 212(e) may not change to TC classification in the United States. However, there is nothing to preclude his/her admission as a TC from outside the United States. Such Canadian citizens, however, remain subject to section 212(e) for change of nonimmigrant status and adjustment purposes.