

9 FAM 41.51

TREATY TRADER OR TREATY INVESTOR

(CT:VISA-994; 08-14-2008)
(Office of Origin: CA/VO/L/R)

9 FAM 41.51 RELATED STATUTORY PROVISIONS

(CT:VISA-994; 08-14-2008)

See INA 101(a)(15)(E) (8 U.S.C. 1101(a)(15)(E)), INA 101(a)(45) (8 U.S.C. 1101(a)(15)(E)), INA 214(j) (8 U.S.C. 1184(j)), INA 214(e)(6) (8 U.S.C. 1184(e)(6)), Public Law 107-124, and 9 FAM 41.59 Exhibit II.

INA 101(a)(15)(E)

(15) The term “immigrant” means every alien except an alien who is within one of the following classes of nonimmigrant aliens

- (E) an alien entitled to enter the United States under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and the foreign state of which he is a national, and the spouse and children of any such alien if accompanying or following to join him:
 - (i) solely to carry on substantial trade, including trade in services or trade in technology, principally between the United States and the foreign state of which he is a national;
 - (ii) solely to develop and direct the operations of an enterprise in which he has invested, or of an enterprise in which he is actively in the process of investing, a substantial amount of capital; or
 - (iii) solely to perform services in a specialty occupation in the United States if the alien is a national of the Commonwealth of Australia and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 212(t)(1)

INA 101(a)(45)

- (45) The term “substantial” means, for purposes of paragraph (15)(E) with reference to trade or capital, such an amount of trade or capital as is established by the Secretary of State, after consultation with appropriate agencies of Government.

INA 214(j)

j. Labor disputes

- (1) Notwithstanding any other provision of this chapter, an alien who is a citizen of Canada or Mexico who seeks to enter the United States under and pursuant to the provisions of Section B, Section C, or Section D of Annex 1603 of the North American Free Trade Agreement, shall not be classified as a nonimmigrant under such provisions if there is in progress a strike or lockout in the course of a labor dispute in the occupational classification at the place or intended place of employment, unless such alien establishes, pursuant to regulations promulgated by the Attorney General, that the alien’s entry will not affect adversely the settlement of the strike or lockout or the employment of any person who is involved in the strike or lockout. Notice of a determination under this paragraph shall be given as may be required by paragraph 3 of article 1603 of such Agreement. For purposes of this paragraph, the term “citizen of Mexico” means “citizen” as defined in Annex 1608 of such Agreement.
- (2) Notwithstanding any other provision of this chapter except section 212(t)(1) of this title, and subject to regulations promulgated by the Secretary of Homeland Security, an alien who seeks to enter the United States under and pursuant to the provisions of an agreement listed in subsection (g)(8)(A) of this section, and the spouse and children of such an alien if accompanying or following to join the alien, may be denied admission as a nonimmigrant under subparagraph (E), (L), or (H)(i)(b1) of section 101(a)(15) of this title if there is in progress a labor dispute in the occupational classification at the place or intended place of employment, unless such alien establishes, pursuant to regulations promulgated by the Secretary of Homeland Security after consultation with the Secretary of Labor, that the alien’s entry will not affect adversely the settlement of the labor dispute or the employment of any person who is involved in the labor dispute. Notice of a determination under this paragraph shall be given as may be required by such agreement.

INA 214(e)(6)

e. Nonimmigrant professionals and annual numerical limit

- (1) Notwithstanding any other provision of this chapter, an alien who is a citizen of Canada and seeks to enter the United States under and pursuant to the provisions of Annex 1502.1 (United States of America), Part C—Professionals, of the United States-Canada Free-Trade Agreement to engage in business activities at a professional level as provided for therein may be admitted for such purpose under regulations of the Attorney General promulgated after consultation with the Secretaries of State and Labor.
- (2) An alien who is a citizen of Canada or Mexico, and the spouse and children of any such alien if accompanying or following to join such alien, who seeks to enter the United States under and pursuant to the provisions of Section D of Annex 1603 of the North American Free Trade Agreement (in this subsection referred to as “NAFTA”) to engage in business activities at a professional level as provided for in such Annex, may be admitted for such purpose under regulations of the Attorney General promulgated after consultation with the Secretaries of State and Labor. For purposes of this chapter, including the issuance of entry documents and the application of subsection (b) of this section, such alien shall be treated as if seeking classification, or classifiable, as a nonimmigrant under section 101(a)(15) of this title. The admission of an alien who is a citizen of Mexico shall be subject to paragraphs (3), (4), and (5). For purposes of this paragraph and paragraphs (3), (4), and (5), the term “citizen of Mexico” means “citizen” as defined in Annex 1608 of NAFTA.
- (3) The Attorney General shall establish an annual numerical limit on admissions under paragraph (2) of aliens who are citizens of Mexico, as set forth in Appendix 1603.D.4 of Annex 1603 of the NAFTA. Subject to paragraph (4), the annual numerical limit—
 - (A) beginning with the second year that NAFTA is in force, may be increased in accordance with the provisions of paragraph 5(a) of Section D of such Annex, and
 - (B) shall cease to apply as provided for in paragraph 3 of such Appendix.
- (4) The annual numerical limit referred to in paragraph (3) may be increased or shall cease to apply (other than by operation of paragraph 3 of such Appendix) only if—

- (A) the President has obtained advice regarding the proposed action from the appropriate advisory committees established under section 2155 of title 19 of U.S. Code;
 - (B) the President has submitted a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that sets forth—
 - (i) the action proposed to be taken and the reasons therefor, and
 - (ii) the advice obtained under subparagraph (A);
 - (C) a period of at least 60 calendar days that begins on the first day on which the President has met the requirements of subparagraphs (A) and (B) with respect to such action has expired; and
 - (D) the President has consulted with such committees regarding the proposed action during the period referred to in subparagraph (C).
- (5) During the period that the provisions of Appendix 1603.D.4 of Annex 1603 of the NAFTA apply, the entry of an alien who is a citizen of Mexico under and pursuant to the provisions of Section D of Annex 1603 of NAFTA shall be subject to the attestation requirement of section 212(m) of this title, in the case of a registered nurse, or the application requirement of section 1182 (n) of this title, in the case of all other professions set out in Appendix 1603.D.1 of Annex 1603 of NAFTA, and the petition requirement of subsection (c) of this section, to the extent and in the manner prescribed in regulations promulgated by the Secretary of Labor, with respect to sections 212(m) and 212(n) of this title, and the Attorney General, with respect to subsection (c) of this section.
- (6) In the case of an alien spouse admitted under section 101 (a)(15)(E) of this title, who is accompanying or following to join a principal alien admitted under such section, the Attorney General shall authorize the alien spouse to engage in employment in the United States and provide the spouse with an “employment authorized” endorsement or other appropriate work permit.

9 FAM 41.51 RELATED REGULATORY PROVISIONS

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See 22 CFR 41.51.