

United States Citizenship and Immigration Services Announces New Filing Option for Canadian TN Applicants

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United States Citizenship and Immigration Services (“USCIS”) recently announced that, as of October 1, 2012, it began accepting Form I-129s (Petition for Nonimmigrant Worker) filed on behalf of Canadian citizens who are outside the United States and are seeking [Trade NAFTA](#) (“TN”) status. TN status arises from the North American Free Trade Agreement and is available to certain professionals who hold Canadian (or Mexican) citizenship.

Prior to October 1, 2012, USCIS only accepted Form I-129 in connection with a request to extend a TN nonimmigrant’s existing status or to change the status of an alien holding a different nonimmigrant status to a TN. Canadian citizens who were physically outside of the United States were not permitted to seek advance approval of their TN cases by filing a Form I-129.

Canadian citizens instead would apply at the time of entry, either at a land port of entry or at a preclearance facility located in a Canadian Airport. In such cases, the TN application would be adjudicated by United States Customs & Border Protection (“USCBP”) immediately prior to the applicant’s entry to the United States. Although this resulted in quick adjudications, applicants would not know whether they would receive their TN until they applied for admission.

Although the addition of an alternative process for the adjudication of TNs is welcome, given USCIS’ less than stellar record in adjudicating other nonimmigrant categories (such as L-1 and H-1B), it is unlikely that USCIS will be overly generous in its TN adjudications. Nevertheless, in appropriate cases, the ability to seek a TN petition approval in advance of the alien’s application for admission to the United States may be beneficial.

