

Important Changes to NAFTA and the Chile/Singapore Free Trade Agreements, Effective January 1, 2004.

On January 1, 2004, two important changes regarding free trade go into effect: New procedures for Mexican NAFTA professionals and new Free Trade Agreements with Chile and Singapore.

Change to the NAFTA with respect to Mexican Nonimmigrant (“TN”) Professionals

Under the provisions of the NAFTA, the petition requirements for Mexican nonimmigrant professionals will end at midnight, December 31, 2003. This means that employers wanting to hire Mexican professionals under the provisions of the NAFTA will no longer be required to obtain a certified labor condition application from the US Department of Labor or file Form I-129 with the USCIS. Mexican professionals desiring a free trade visa will apply directly to a US Department of State consular office in Mexico for the visa. USCIS will publish regulations shortly that will note this change required by the NAFTA. Persons seeking more information on the requirements for obtaining a free trade nonimmigrant visa should visit the US Department of State website at www.state.gov. Any I-129 submitted to the USCIS on or after January 1, 2004, on behalf of a NAFTA Mexican professional will be returned, with the fee submitted, to the petitioner with instructions to contact the Department of State. Extensions and changes of nonimmigrant status for NAFTA professionals in TN classification will continue to be processed by the USCIS, using Form I-129, with the fee specified in the instructions to that form. Extension and change of status applications for TN nonimmigrant professionals must be submitted to the Nebraska Service Center for processing, accompanied by a letter from the US or foreign employer stating the activity to be engaged in, the anticipated length of stay, and the arrangements for remuneration.

Implementation of New Chile and Singapore Free Trade Agreements

January 1, 2004, also is the effective date for implementation of the immigration provisions of two new Free Trade Agreements with the countries of Chile and Singapore. Under the immigration provisions of these agreements, as approved by Congress in Public Laws 108-77 and 108-78, a new H-1B1 nonimmigrant category has been created for professionals from Chile and Singapore. For purposes of the trade agreements, a professional is defined as “a national of [Chile or Singapore] who is engaged in a specialty occupation requiring (a) theoretical and practical application of a body of specialized knowledge; and (b) attainment of a post-secondary degree in the specialty requiring four or more years of study (or the equivalent of such a degree) as a minimum for entry into the occupation.” In addition, the two agreements allow for the presentation of alternate educational credentials in the case of certain Chilean citizens seeking

admission as H-1B1 Agricultural Managers and Physical Therapists and, in the case of certain citizens from both countries, those seeking admission in H-1B1 classification as Disaster Relief Claims Adjusters. Further, in the case of both countries, the two agreements allow persons seeking admission as Management Consultants to present alternative documentation reflecting experience in the area of specialization. By statute, Chile will be allocated a maximum of 1,400, and Singapore a maximum of 5,400 H-1B1 nonimmigrant visas annually for professionals from these countries. (These nonimmigrant visas will be deducted from the annual numerical cap on H-1B nonimmigrant visas.) Citizens of Chile or Singapore must apply directly to the US Department of State overseas for an H-1B1 nonimmigrant visa to be eligible for admission to perform professional services for a US employer pursuant to the two trade agreements.

As with the provisions of the NAFTA, the USCIS will only process requests for extensions and changes of nonimmigrant status to H-1B1 nonimmigrant professional for citizens of Chile and Singapore. USCIS will not accept initial requests for H-1B1 status under the two Free Trade Agreements. Any Form I-129 submitted to the USCIS on or after January 1, 2004, on behalf of a professional from Chile or Singapore under those countries' respective Free Trade Agreements will be returned, together with the fee with instructions to contact the Department of State. While the USCIS is revising the Form I-129 to provide specific instructions for extensions or changes of nonimmigrant status, citizens of Chile or Singapore should, until further notice, submit the current Form I-129 and follow the instructions currently listed for changing status to the old "TC" (Trade Canada) nonimmigrant category, including submission of the fee required for an extension or change of status specified on the instructions to the Form I-129. Please note that an extension or change of status request to that of Free Trade Nonimmigrant for a citizen of Chile or Singapore must be submitted to the USCIS Nebraska Service Center and must be accompanied by a US Department of Labor issued certified H-1B1 labor attestation.

Also important to note is that the new Free Trade Agreements provide for the classification of Chilean and Singaporean citizens as E-1 Treaty Traders and E-2 Treaty Investors. Chilean and Singaporean citizens overseas may apply directly to the Department of State for a nonimmigrant E-1 or E-2 visa. Chilean and Singaporean citizens already admitted to the United States in nonimmigrant status that desire to change nonimmigrant status to that of either E-1 or E-2 may apply to the USCIS, using Form I-129 and following the general instructions listed in the I-129 instruction booklet for such applications.