

Occupational classifications: Are you an economist or an accountant?

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For better or worse, it was a missed opportunity not to reassess the trade national (TN) occupational classification list under NAFTA's Appendix 1603.D.1 when the United States-Mexico-Canada Agreement (USMCA) was negotiated. It has been 25 years since these occupational classifications were finalized, and updates on what each occupational classification entails in the current workforce would have been welcome.

The absence of any meaningful revisions to the TN category means that we are stuck with relying on piecemeal policy guidance from the U.S. Department of Homeland Security (DHS) and Department of Labor (DOL) materials to define occupational classifications. Defining what does and does not fall under various occupations within an ever-changing economic landscape is not easy.

This is particularly true for financial and business positions within the related TN occupational classifications for economists and accountants. U.S. Citizenship and Immigration Services (USCIS) attempted to achieve some clarity by issuing a policy memorandum at the end of 2017 titled TN Nonimmigrant Economists Are Defined by Qualifying Business Activity. Many believe this policy memorandum makes it more challenging to obtain a TN under the economist occupational classification. While I agree, I think the practical solution involves just a small strategy correction.

What is an economist?

In years past, it was common for a Canadian offered a position in the U.S. in any finance or business-related position to apply for a TN under the economist occupational classification. This included brokers, analysts and any number positions with large Wall Street, private equity and hedge fund firms. If the role-related in any way to investing, market research or the economy, the position was classified as an economist.

USCIS' 2017 policy memorandum changed that practice. In part, the memorandum reads:

"... for an applicant to qualify for TN status based on work in the profession of economist, the applicant must engage in activities consistent with the profession of economist. Activities that constitute a broad range of other professions related to economics, such as activity performed by financial analysts, market research analysts, and marketing specialists do not qualify for TN status.

"USCIS is clarifying that persons who are engaged primarily in activities associated with market research analysts and marketing specialists, as described in the SOC [Standard Occupational Classification system] and the Bureau of Labor Statistics' Occupational Outlook Handbook (OOH), do not qualify for the TN nonimmigrant classification as an economist. "With respect to the occupation of financial analyst, USCIS recognizes that economists and financial

analysts are related occupations and that there may occasionally be some similarity in the activities of these two occupational categories. As differentiated from economists, however, financial analysts primarily conduct quantitative analyses of information affecting investment programs of public or private institutions. Recognizing that these types of positions are not the same, the SOC separates these occupations into two categories. Therefore, to be consistent with the SOC, USCIS is clarifying that economists and financial analysts are two separate occupations for the purposes of qualifying for TN nonimmigrant status pursuant to NAFTA."

I may have to surrender my American Immigration Lawyers Association (AILA) membership for saying this, but I agree with the general purpose and guidance in this memorandum. While the economist occupational classification covers a wide variety of roles, I do not think it applies to any and all positions within finance and business. I do not think that everyone who works on Wall Street or conducts market research is an "economist." So where does this leave us?

First, even evaluated against this policy memorandum, there are still many positions that can still qualify under the economist occupational classification. The current OOH is not as broad and descriptive as it was in the past, but still includes guidance on corporate economist roles:

"Economists working for corporations help managers and decisionmakers understand how the economy will affect their business. Specifically, economists may analyze issues such as consumer demand and sales to help a company maximize its profits.

"Businesses and organizations across many industries use economic analysis and quantitative methods to analyze and forecast business, sales, and other economic trends. Demand for economists should come from the increasing complexity of the global economy, additional financial regulations, and a more competitive business environment."

We can also go beyond the OOH to prove how various roles fall under the economist occupational classification. I recently worked on a TN for a real estate economist position where the individual was responsible for interpreting and forecasting real estate market trends. This role involved developing models to compile and analyze economic data related to industrial real estate. There is still support, therefore, to be found for many types of economist roles, including financial economists, industrial economists, and econometricians. A good source of information for various economist roles is the National Association for Business Economics (NABE).

This is part one of a two-part series. Part two will discuss the occupational classification of accountant.

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