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Class Action Lawsuit in Bait-and-Switch Scheme Leads to Increased Scrutiny of TN Visas

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By: Fazila Vaid

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A class action lawsuit filed in Georgia alleged that U.S. companies lured Mexican nationals to the U.S. to work as professional engineers in the TN visa category, but upon arrival to the U.S., employed them as assembly line workers for low wages and long hours. The lawsuit alleged that over a period of three years, a U.S. automotive parts manufacturer that supplies to a major automotive manufacturer, along with its recruiting firm, misled Mexican nationals, as well as the U.S. government, in a fraudulent scheme which involved lying during the recruitment and visa application process for the employment of these workers on TN visas. Once in the U.S., the Mexican nationals were informed that they would be performing production work and had to work long hours at hourly wages that were a fraction of what the U.S. citizens on the same assembly line were making. If the allegations against the parts supplier and its recruiting firm are true, then both companies violated the terms and conditions of the TN visa category by staffing unskilled positions in the U.S. with professional engineers from Mexico. In October 2023, a tentative settlement agreement was reached between the parties. However, the serious allegations raised in the lawsuit have resulted in increased scrutiny of all TN visa applications submitted at U.S. consular posts in Mexico, and companies are reporting denials of TN visa applications in the scientific technician/technologist occupation, a category which has always been under careful scrutiny.

The United States-Mexico-Canada Agreement (USMCA) created special economic and trade relationships for the United States, Canada and Mexico. The USMCA free trade agreement replaced the North American Free Trade Agreement (NAFTA) implemented in 1994. The USMCA TN visa allows citizens of Canada and Mexico to work in the U.S. in certain professional-level business occupations for U.S. employers on a prearranged basis. The USMCA specifies which occupations are eligible for TN classification and the minimum qualifications for each occupation. With limited exceptions, most TN occupations require a bachelor's degree as an entry-level requirement. Eligible professions include engineers, accountants, lawyers, and economists, among others. Mexican citizens seeking TN status must apply for and be issued a TN visa while Canadian citizens can apply for TN admission at a U.S. port-of-entry. TN applicants must provide an employment letter from the prospective U.S. employer which specifies the USMCA-enumerated professional occupation under which the applicant will work. The letter must also contain a detailed description of the job duties, the anticipated length of stay in the U.S., and arrangements for remuneration.

Unlike other visa categories, the TN category does not require pre-approval from the U.S. Citizenship and Immigration Services (USCIS). What makes the TN category particularly attractive for U.S. employers is that, unlike the H-1B visa, there is no quota, and employers can have TN workers commence work relatively quickly once an offer of employment has been accepted. As long as visa appointments are readily available at a U.S. consular post in Mexico, Mexican TN visa applicants can apply for a visa quickly and commence employment immediately after obtaining the visa. Canadians can simply appear at a port-of-entry with the appropriate paperwork.

U.S. employers are strictly prohibited from employing TN workers in a manner inconsistent with the professional occupation under which the worker obtained TN classification. Specifically, U.S. employers cannot provide a letter stating that the TN worker will be employed as an engineer, when he/she will actually be working in a non-professional capacity doing assembly, production or other unskilled work. If the allegations against the parts supplier and its recruiting firm are true, then both companies violated the terms and conditions of the TN visa category by staffing unskilled positions in the U.S. with professional engineers from Mexico. The serious allegations raised in this lawsuit have resulted in increased scrutiny of all TN visa applications submitted at U.S. consular posts in Mexico. Moreover, companies are reporting denials of TN visa applications in the scientific technician/technologist occupation, a category which has always been under careful scrutiny.

Additional information about the lawsuit and the TN visa category will be contained in future Business Immigration Monthly Updates when they become available.