

## **Chapter 15**

### **Temporary Entry for Business Persons**

#### **Article 15.01 General Principles**

This Chapter reflects the preferential trading relationship between the Parties, the desirability of facilitating temporary entry on a reciprocal basis and of establishing transparent criteria and procedures for temporary entry, and the necessity to ensure border security and to protect the domestic labor force and permanent employment in their respective territories.

#### **Article 15.02 General Obligations**

1. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article 15.01 and, in particular, shall apply expeditiously those measures so as to avoid unduly delaying or impairing trade in goods or services or conduct of investment activities under this Agreement.
2. The Parties shall endeavor to develop and adopt common criteria, definitions and interpretations for the implementation of this Chapter.

#### **Article 15.03 Grant of Temporary Entry**

1. Each Party shall grant temporary entry to business persons who are otherwise qualified for entry under applicable measures relating to public health and safety and national security, in accordance with this Chapter, including the provision of Annex 15.03 and 15.03(1).
2. A Party may refuse a temporary entry to a business person where the temporary entry of that person might affect adversely:
  - (a) the settlement of any labor dispute that is in progress at the place or intended place of employment; or
  - (b) the employment of any person who is involved in such dispute.
3. Each Party shall limit any fees for processing applications for temporary entry of business persons to the approximate cost of services rendered.
4. An authorization of temporary entry under this Chapter, does not supersede the requirements demanded by the exercise of a profession or activity according to the specific rules in force in the territory of the Party authorizing the temporary entry.

#### **Article 15.04 Provision of Information**

Further to Article 20.02 (Publication), each Party shall: provide to the other Party such materials as will enable it to become acquainted with measures to be adopted relating to this Chapter.

#### **Article 15.05 Dispute Settlement**

1. A Party may not initiate proceedings under Article 22.05 (Consultations) regarding a refusal to grant temporary entry under this Chapter or a particular case arising under Article 15.02 unless:

- (a) the matter involves a pattern of practice; and
- (b) the business person has exhausted the available administrative review regarding the particular matter.

2. The administrative review referred to in paragraph 1(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within six months of the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.

#### **Article 15.06 Definitions**

1. For purposes of this Chapter:

**business activities** means legitimate commercial activities undertaken and operated with the purpose of obtaining profits in the market, not including the possibility of obtaining employment, wages or remuneration temporal or permanent from a labour source in the territory of a Party;

**business person** means a national of a Party who is engaged in trade of goods, provision of services or conduct of investment activities, without the intention to seek employment;

**labor certification** means procedure applied by the competent administrative authority with the purpose of determining if a national of a Party who seeks a temporary entry into the territory of the other Party displaces national workers in the same domestic industry or noticeably harms labour conditions in it;

**national** means "national" as defined in Chapter 2 (General Definitions), but not including those permanent residents;

**pattern of practice** means a practice repeatedly followed by the immigration authorities of one Party during the representative period immediately before the execution of the same; and

**temporary entry** means entry into the territory of a Party by a business person of the other Party without the intention to establish permanent residence.

2. For purposes of Annex 15.03:

**executive functions** means functions assigned in an organization to a person who shall have the following basic responsibilities:

- (a) managing the administration of the organization, or of a relevant component, or function within it;
- (b) establishing the policies and objectives of the organization, component or function; or
- (c) receiving supervision or general direction only from executives in a higher level, the board of directors or the administrative council of the organization or its shareholders;

**functions requiring specialized knowledge** means functions that require special knowledge of goods, services, research, equipment, techniques, management of an organization or of its interests and their application in international markets, or an advanced level of knowledge or experience in the processes and procedures of the organization; and

**management functions** means functions assigned in an organization to a person who shall have the following basic responsibilities:

- (a) managing the organization or an essential function within it;
- (b) supervising and controlling the work of other professional employees, supervisors or administrators;
- (c) having the authority to engage and dismiss or to recommend these actions, and to undertake other actions related to management of the personnel directly supervised by this person, and to perform senior functions within the organization hierarchy or functions related to his position; or
- (d) performing discretionary actions related to the daily operation of the function over which this person has the authority.

## **Annex 15.03**

### **Temporary Entry for Business Persons**

#### **Section A - Business Visitors**

1. Each Party shall grant temporary entry and expedite document verification to a business person seeking to engage in a business activity set out in Appendix 15.03(A)(1), without other requirements than those established by the existing immigration measures applicable to temporary entry, on presentation of:

- (a) proof of nationality of a Party;
- (b) documentation demonstrating that the business person will be so engaged and describing the purpose of entry, and evidence demonstrating that the proposed business activity is international in scope and that the business person is not seeking to enter the local labor market.

2. Each Party shall consider that a business person satisfies the requirements of paragraph 1(b) by demonstrating that:

- (a) the primary source of remuneration for the proposed business activity is outside the territory of the Party granting temporary entry; and
- (b) the business person's principal place of business and the actual place of accrual of most of the profits remain outside such territory.

For purpose of this paragraph, a Party that authorizes temporary entry shall normally accept a declaration as to the principal place of business and the actual place of accrual of profits. Where the Party requires further proof, it should be conducted according to its law.

3. Each Party shall grant temporary entry to a business person seeking to engage in a business activity other than those set out in Appendix 15.03(A)(1), on a basis no less favorable than that provided under the existing provisions of the measures set out in Appendix 15.03(A)(1).

4. No Party may:

- (a) as a condition for temporary entry under paragraph 1 or 3, require prior approval procedures, petitions, labor certification tests or other procedures of similar effect; or
- (b) impose or maintain any numerical restriction relating to temporary entry in accordance with paragraph 1 or 3.

5. Notwithstanding paragraph 4, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. The Parties shall consider removing their visa or equivalent document requirement.

### **Section B - Traders and Investors**

1. Each Party shall grant temporary entry and provide documentation verification to a business person, who in a capacity that is managerial, executive or requiring specialized knowledge, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry, and seeks to:

- (a) carry on substantial trade in goods or services principally between the territory of the Party of which the business person is a national and the territory of the other Party into which entry is sought; or
- (b) establish, develop, administer or provide advice or key technical services to the operation of an investment to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital.

2. No Party may:

- (a) as a condition for authorizing temporary entry under paragraph 1, require labor certification tests or other procedures of similar effect; or
- (b) impose or maintain any numerical restriction relating to temporary entry in accordance with paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. The Parties shall consider avoiding or removing their visa or equivalent document requirement.

### **Section C - Intra-corporate Transferees**

1. Each Party shall grant temporary entry and provide confirming documentation to a business person employed by an enterprise who seeks to render management, executive or functions requiring specialized knowledge to that enterprise or a subsidiary or affiliate thereof, provided that the business person otherwise complies with effective immigration measures applicable to temporary entry. A Party may require the person to have been employed continuously by the enterprise for one year immediately preceding the date of the application for admission.

2. No Party may:

- (a) as a condition for temporary entry under paragraph 1, require labor certification tests or other procedures of similar effect; or

- (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. The Parties shall consider avoiding or removing their visa or equivalent document requirement.

## **Annex 15.03(1)**

### **Special Provision Regarding Temporary Entry of Business Persons**

For the Republic of Nicaragua:

The business person who enters the Republic of Nicaragua under any of the categories of Annex 15.03 shall hold a temporary residency and may renew this for consecutive periods, as long as the conditions under which the residency was granted remain the same. Such persons may not request a permanent residency nor change their immigration status, unless they comply with the general provisions of the *Ley de Migración*, Law No. 153 of April 30, 1993, and *Ley de Extranjería*, Law No. 154 of May 3, 1993.

For the Republic of China (Taiwan):

1. The business person should obtain a visitor or resident visa prior to entry. A visitor visa of which validity no longer than 1 year, multiple entry and 90 day duration of stay may be issued. The entry visa held by a business person, who engages in the performance of contract, such as subcontract, sale, or technical cooperation, shall be deemed as a work permit for the first fourteen days. The business person in possession of a resident visa may stay in the Republic of China (Taiwan) provided the work permit remains valid. The duration of stay may be extendable for consecutive periods as long as the conditions justifying it are maintained. Such a person may not require permanent residence unless satisfying the provisions of the Immigration Law.
2. If a business person is defined as a resident in the mainland China area by the Statute Governing the Relations Between the People of the Taiwan Area and the Mainland Area and its Regulations, the person must apply for entry permit according to the said Statute and Regulations.

## **Appendix 15.03(A)(1)**

### **Business Visitors**

#### **Research and Design**

- Technical, scientific and statistical researchers conducting independent research or research for an enterprise established in the territory of the other Party.

#### **Cultivation, Manufacture and Production Purchasing**

- Purchasing and production personnel at managerial level conducting commercial operation for an enterprise established in the territory of the other Party.

#### **Marketing**

- Market researchers and analysts conducting independent research or analysis, or research or analysis for an enterprise established in the territory of the other Party.
- Trade fair and promotional personnel attending a trade convention.

#### **Sales**

- Sales representatives and agents taking orders or negotiating contracts on goods or services for an enterprise established in the territory of the other Party but not delivering goods or providing services.
- Buyers purchasing for an enterprise established in the territory of the other Party.

#### **After-sale Service**

- Installation, repair and maintenance personnel, and supervisors, possessing specialized knowledge essential to a seller's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale of commercial or industrial equipment or machinery, including computer software, purchased from an enterprise located outside the territory of the Party into which temporary entry is sought, during the life of the warranty or service agreement.

#### **General Service**

- Consultants conducting business activities at the level of the provision of cross-border services.



- Management and supervisory personnel engaging in a commercial operation for an enterprise established in the territory of the other Party.
- Financial services personnel engaging in commercial operation for an enterprise established in the territory of the other Party.
- Public relations and advertising personnel consulting with business associates, or attending or participating in conventions.
- Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions or conducting a tour that has begun in the territory of the other Party.

### **Appendix 15.03(A)(3)**

#### **Existing Immigration Measures**

In the case of the Republic of Nicaragua:

- Ley de Nacionalidad, Law No.149., Published in the Official Gazette No. 124 on June 30, 1992;
- Ley de Migración. Law No.153, Published in the Official Gazette No. 80 on April 30, 1993;
- Ley de Extranjería. Ley No. 154, Published in the Official Gazette No 81 on May 3, 1993;
- Ley de Control de Tráfico de Migrantes Ilegales. Law No.240, Published in the Official Gazette No.220 on November 20, 1996;
- Ley de Incentivos Migratorios, Law No.250, Published in the Official Gazette No. 52 don March 14, 1997;
- Decree-Law 15-94 Aranceles por Servicios de Migración y Extranjería Published in the Official Gazette No 62 on April 6, 1994; and
- Decree N° 57-2005 Sobre la Aplicación para Visas para Nacionalidades Restringidas., Published in the Official Gazette No 172 on september 5, 2005.

In the case of the Republic of China (Taiwan):

- The Immigration Law, promulgated No. 8800119740 on May 21, 1999;
- The Statute Governing Issuance of Republic of China (Taiwan) Visas on Foreign Passports, promulgated on June 02, 1999 and the Regulations for Issuance of Republic of China (Taiwan) Visas on Foreign Passports, promulgated on May 31, 2000;
- Employment Service Act, Promulgated on May 8, 1992, amended on May 16, 2003; and
- Enforcement Rules of the Employment Service Act, amended by the Council of Labor Affairs on January 13, 2004.

