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The TN Visa: The Future of Foreign Workers in Livestock Production

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ABSTRACT

Agricultural employers have faced extreme challenges in recruiting and retaining an adequate workforce. Various societal changes have made hiring local workers into agricultural jobs difficult. Therefore, there is a growing reliance on foreign workers and visa programs to meet labor demands. One such program, the TN visa, can be an effective and useful tool for recruiting professional labor for livestock operations, and many agricultural employers have already seen its value. It is likely that the use of the TN program will continue to grow in the future. However, there is opportunity for misuse and abuse of the TN program because there are few administrative rules and limited oversight. We offer recommendations to improve the TN program and the well-being of TN professionals including additional oversight of the program, transparency in recruiting and contracting workers, educating TN workers about U.S. labor rights, ensuring fair pay, and allowing a path to work authorization for TN workers' spouses and children who accompany them in the U.S. Clearly, sustainable solutions to the farm labor shortage are needed. As a field, we need to better understand workforce recruitment and retention concerns as well as mechanisms being used to address such concerns and their impact on workers' health, safety, and well-being.

KEYWORDS

Immigration; farmworkers; TN visa; guest workers; farm labor

Agricultural employers, particularly those in the livestock sector, have faced extreme challenges in recruiting and retaining an adequate workforce to meet production goals. Societal changes such as declining population in rural communities, fewer young people growing up on farms, and the lure of higher wages and regular work schedules have made hiring local workers into agricultural jobs difficult.^{1–3} To meet the demand for labor, agricultural employers often rely on foreign workers.

Livestock-related jobs, particularly those in animal feeding operations, are demanding, requiring year-round work and long hours with few days off.⁴ Such jobs typically are not eligible for common guest worker visa programs such as the H-2A, which allows employers to bring foreign nationals to complete temporary or seasonal agricultural work.^{5,6} The livestock industry, including beef, dairy, and swine producers are turning to use the “Trade National” (TN) visa to meet their demand for labor.

In this commentary, we will: (1) discuss the TN visa and its history, application requirements, and use in agriculture; (2) highlight some concerns associated with this visa; and (3) provide recommendations to improve the TN program and the well-being of TN professionals.

History of the TN Visa

In December 1993, President Bill Clinton signed the North American Free Trade Agreement (NAFTA) into law.⁷ This agreement was aimed at facilitating cross-border movement of goods and services to promote fair competition, increase investment opportunities, and provide protection and enforcement of intellectual property rights.⁸ One byproduct of NAFTA was the creation of what is commonly referred to as the TN visa. This type of non-immigrant visa allows citizens of Canada and Mexico to temporarily enter the

U.S. to take part in predetermined business activities.⁹

The TN visa was not the first time that non-immigrant workers were allowed temporary entry into the U.S. The 1989 Canada-United States Free Trade Agreement (CUSFTA) allowed the temporary entry of “business persons” between the two countries and explicitly acknowledged the need to ensure “border security and protect indigenous labor and permanent employment.”¹⁰ CUSFTA was ultimately superseded by NAFTA, but remnants of that agreement have led to differential treatment of Canadian and Mexican workers, allowing Canadian professionals to apply for TN status at any U.S. port of entry while Mexican applicants must obtain a visa at a U.S. embassy or consulate in Mexico before they can enter the country. A prospective employer can complete an application on behalf of the TN professional, but obtaining it requires an in-person interview. Once the applicant’s TN visa has been approved, they can then seek admission into the U.S.¹¹ In July 2020, the United States-Mexico-Canada Agreement (USMCA) officially replaced NAFTA. While the USMCA modified some of NAFTA’s international trade provisions, the immigration provisions remained unchanged.¹²

TN Visa application requirements

A person seeking admission through a TN visa shall demonstrate “business activity at a professional level in a profession set out in Appendix 2” of Annex 16-A of USMCA Chapter 16.¹³ Among professionals who are eligible to seek admission as TN workers are those associated with agriculture such as agronomists; animal breeders; animal, dairy, or poultry scientists; engineers; horticulturalists; and soil scientists.¹³ The basic requirements for eligibility include that: (1) The applicant must be a citizen of Canada or Mexico; (2) Their profession qualifies under the regulations; (3) The position in the U.S. requires a NAFTA professional; (4) There is a prearranged full- or part-time job with a U.S. employer; and (5) The applicant has the qualifications to practice the profession in question.⁹ With few exceptions, each profession allowable under the TN visa requires

a baccalaureate degree as an entry-level requirement. If a baccalaureate is required, experience cannot be substituted, and for some professions, experience may be required in addition to the degree.¹¹ Dependents of TN professionals, including spouses and children under age 21, may be eligible for a “Trade Dependent” (TD) visa, which would allow them entry into the country but not permission to work.⁹

Use of the TN Visa

The use of the TN visa has grown each year except fiscal year 2020 when routine visa services were suspended due to the COVID-19 pandemic. In fiscal year 2021, 24,904 TN visas were issued by the U.S. Department of State.¹⁴ Figure 1 shows the trend of TN visa issuance from 1997–2021 and highlights the steep increase in use after 2010.¹⁵

Although the use of the TN visa is becoming more common in agriculture, quantifying its use is difficult. Industry organizations including the National Council of Agricultural Employers, the Pork Checkoff, and the Nebraska Cattlemen have brought in speakers to discuss the use of the TN program to ensure an adequate workforce for livestock production operations.^{16,17} In our recent study, *Health and Safety of Latino Immigrant Cattle Feedyard Workers in the Central States Region*, we found 41 workers who had TN visas, which represented approximately 17% of our sample. TN workers were mainly engaged in animal handling jobs such as cowboys, processing crews, and in the hospital pen given that most were trained as veterinarians in Mexico, which is similar to a veterinary technician in the U.S.

The TN visa may be a more suitable option for livestock production operations because it can be used for year-round employment, rather than just temporary or seasonal work that is allowed through the H-2A program. Additionally, H-2A visas are only valid for the requested time authorized on the temporary labor certification (maximum up to one year) and are renewable for one-year increments (with a new approved temporary labor certification for each extension) up to a total of three years before the worker must leave the U.S. for a minimum of three months prior to re-entry.⁵ TN visas, on the other hand, are valid for

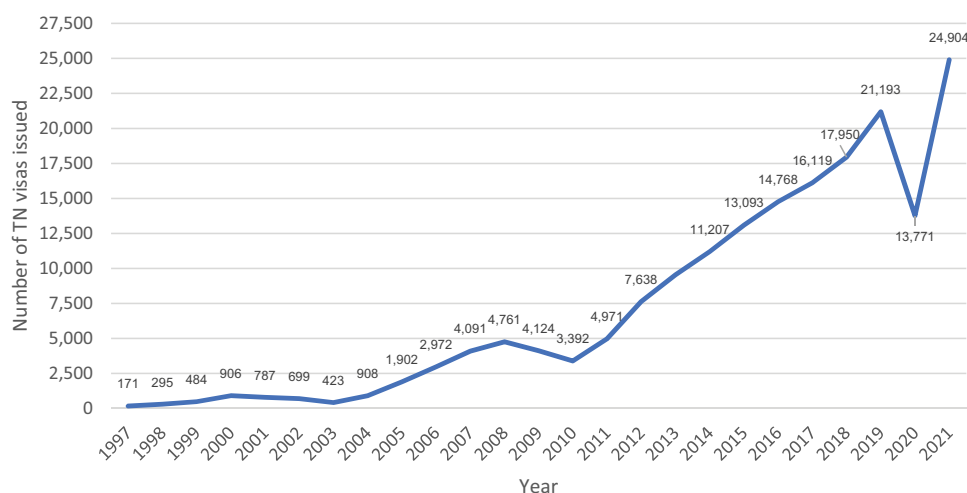


Figure 1. Number of TN visas issued between fiscal years 1997–2021.

Data from the Report of the Visa Office, U.S. State Department ^{14–15}

a three-year period and can be renewed for as many times as necessary. TN visa holders may apply for an extension without leaving the U.S. by having the employer file on their behalf or they may leave the U.S. upon expiration of the visa and re-enter through the same application process used originally.⁹

Concerns with the TN Visa

There is opportunity for misuse and abuse of the TN program. TN visas are tied to employment, creating an imbalance of power between the employer and worker.¹⁸ It may lend itself to precarious employment – job instability, limited control over work and workplace conditions, few protections, and poor pay¹⁹ – because the program has fewer administrative rules for employers compared to other visa programs like the H-2A.²⁰ There is little oversight. Employment contracts are often vague, and workers may not know the nature of the position or its expectations. TN workers may sometimes be underemployed, working in jobs that do not use or require their full skillset or training. For example, in a recent case, *Martinez-Rodriguez v. Giles* (a case currently being litigated in the 9th U.S. Circuit Court of Appeals), six Mexican TN workers trained as veterinarians were classified as “animal scientists” but alleged that they were forced to milk cows and do other menial tasks or be deported.^{21,22} Aside from potential misclassification issues, some workers

have reported being victims of abuse or exploitation, including economic coercion, contract misrepresentation, retaliation, discrimination, and wage theft.¹⁸ Simply leaving is often not a viable option, as some employment contracts contain a “breach fee” where if the worker leaves the job before the contract term is completed, they may owe the employer money.

These issues have implications for worker health and safety. For example, many TN workers have safety knowledge, but they may not advocate for protections or file a complaint due to a lack of familiarity with U.S. systems and limited English proficiency. TN professionals may accept more dangerous tasks due to fear of retaliation including job loss or visa revocation. They may work longer hours because they feel they do not have the right to refuse, possibly leading to burnout. Underemployed TN workers may feel undervalued, distressed, and experience a loss of social status, all of which may lead to lower job satisfaction, turnover, and possibly negative effects on mental health and social well-being.

Recommendations

Additional oversight of the TN visa program is needed.^{21,23} Transparency in the recruitment of workers is critical to ensuring ethical business practices. Both employers and workers should be clear on the nature of the employment contract, pay, and job expectations. While there is

a demonstrated need for agricultural labor, employers should not abuse the TN program, which was intended for professional labor. TN workers must be made aware of their employment and labor rights in the U.S., including those related to health and safety. Whistle-blower protections for those who make complaints should be strengthened, and workers should be informed of their ability to change employers.¹⁸

TN workers should be paid fairly.²³ Implementing regulations to require reasonable wages in accordance with local prevailing wage rates and requiring reimbursement for travel costs incurred primarily for the benefit of the employer could meaningfully improve workers' well-being. Requiring agricultural employers to pay overtime may incentivize hiring an adequate workforce, rather than overextending current workers. Similar to the H-2A program, agricultural employers should be required to provide workers' compensation insurance for any TN workers they employ in case of work-related injury or illness, particularly given the high rate of injury within this industry.^{24,25} Finally, workers' family members on a TD visa should also have a path to obtain work authorization while in the U.S. These combined actions may reduce the vulnerability of foreign workers and their families.

In conclusion, sustainable solutions to the farm labor shortage are needed. The TN visa program can be an effective and useful tool for recruiting professional labor for livestock operations, and many agricultural employers have already seen its value. In the future, it is likely that the use of the program will continue to grow. All farmworkers have a right to health and decent work.²⁶ Future research is needed to quantify the use of the TN visa in agriculture generally and by subsector. Studies should also explore the health, safety, and well-being of TN workers to promote health equity. Research using socioecological models, exploring risk and protective factors both on and off the job, may help identify issues and potential leverage points for change.²⁷

Author contributions

Conceptualization – AKR; Investigation, Original Draft, Writing – Review & Editing – AKR and DR.

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