
2011 QUARTERLY REVIEW: CHANGES TO CANADA'S IMMIGRATION LAWS AND PROCEDURES (Q1)

By Melodie J. Hughes

2010 was a benchmark year from Canadian immigration law, bringing many changes to Canada's immigration laws, regulations, and operating procedures as they relate to the processing and adjudication of both temporary and permanent resident applications. From the introduction of significant changes to Canada's *Immigration and Refugee Protection Regulations* for temporary foreign workers (including the imposition of a 4-year in, 4-year out rule for temporary work permit holders scheduled to come into effect in April of this year), to the expansion of many provincial nominee programs, Citizenship and Immigration Canada (CIC) has established a clear trend in changing Canada's immigration system with a focus on protecting Canada's labour market, stressing the temporary nature of temporary resident visas and work permits, and encouraging permanent residence for skilled individuals with a demonstrated ability to economically establish in Canada. As 2011's first quarter draws to an end, it is evident that this trend continues.

Specifically, in the first quarter of 2011, we have seen further changes to Canada's temporary foreign worker program, including further scrutiny in the assessment of temporary workers, the termination of certain work permit categories, and the expansion of other work permit and permanent residence categories for skilled foreign nationals.

New Forms for all Overseas Temporary Resident Applications

In late 2010, CIC introduced a new *Application for Temporary Resident Visa Made Outside of Canada* [IMM 5257] form to be used by all individuals filing an application for a temporary resident visa (TRV). The new form required all applicants to provide substantially more information than previously required, and introduced an electronic system whereby the application must first be completed online and barcodes issued upon its electronic validation.

More than three months after the new TRV forms and electronic process were introduced, CIC announced the introduction of similar forms and procedures to be followed for all other temporary resident applications filed at Canadian embassies, high commissions, consulates or other visa posts abroad. Effective February 15, 2011, the following new forms and supporting documentation requirements replaced all former versions and were made available to all applicants:

- a **new** *Application for a Work Permit* [IMM 1295] form, the corresponding *Instruction Guide* [IMM 5487] and *Document Checklist* [IMM 5488];
- a **new** *Application for a Study Permit* [IMM 1294] form, the corresponding *Instruction Guide* [IMM 5269] and *Document Checklist* [IMM 5483]; and
- an **updated** version of the *Application for Temporary Resident Visa Made Outside of Canada* [IMM 5257] form, the corresponding *Instruction Guide* [IMM 5256] and *Document Checklist* [IMM 5484]

All three temporary resident application forms (worker, student and visitor) have had modifications to the Education, Current Occupation and Background Information sections. A key change to the work permit application form is the inclusion of an additional section requesting details on the precise nature of the foreign national's intended work in Canada. These changes not only reflect the government's plans to make all application forms and processes more consistent, but also reflect CIC's recent emphasis on verifying the nature of one's work and eligibility for a work permit in Canada.

While older versions of the forms will likely to continue to be accepted at most visa posts for a brief period of time, immigration officers are encouraging all applicants to use the new forms and complete every application online before submission.

Increased Scrutiny of LMO-Exempt Work Permit Applications

Since the IT Workers Pilot Program was eliminated on September 30, 2010, there has been a significant increase in the number of LMO-exempt work permit applications processed at Canadian embassies, high commissions, and consulates abroad, with a distinct spike in applications filed under the LMO-exempt Intra-Company Transfer category. As a result of this influx, CIC officers around the world have started to implement stricter measures in the assessment of intra-company transfer work permit applications for specialized knowledge personnel. Most notably, the Canadian High Commission in New Delhi, India, has started to apply a rigorous threshold for establishing that employees and employers meet the minimum requirements under the intra-company transfer category. They are considering a number of factors, including the worker's current and proposed salary, placement on Canadian payroll, and other criteria to establish that the foreign worker holds "specialized knowledge". This includes evidence that:

- the knowledge held by the foreign worker is uncommon for the industry;
- the worker's knowledge has been gained through extensive experience with the employer (while a minimum of one year is required, officers are often looking for more than one year of experience)
- the worker is in a position that is critical to the well-being, productivity or competitive advantage of the employer
- the worker is paid at a salary that is commensurate with a high degree of specialized knowledge. This is demonstrated by a salary that is equal to or greater than the prevailing wage offered to Canadians in the occupation. Per diems and accommodation costs are not taken into account when assessing the applicant's proposed salary in Canada
- there exists an employer-employee relationship with the Canadian entity, including confirmation that the foreign worker will be on Canadian payroll or, if not on Canadian payroll, an appropriate explanation has been provided
- the Canadian employer has a physical office and ongoing business activities in Canada

Throughout January 2011, the Canadian High Commission in New Delhi continued to suspend the refusal of work permit applications submitted under the intra-company transfer category to afford companies an opportunity to address the above issues and provide additional documentation. While this new practice remains under review on the date of publication, all applications submitted to the High Commission or Visa Application Centre in India must now address the criteria listed above, including evidence of salary and the worker's relationship to the Canadian company.

IT Worker Program Ends in All Provinces

As mentioned, Canada's IT Worker Program, which previously allowed qualified specialists working in one of seven occupations in the IT field to obtain a work permit without requiring a Labour Market Opinion, was cancelled on September 30, 2010. For a limited period of time, however, the program continued to be available for IT workers entering to work in the provinces of Quebec or British Columbia.

Early in the year, the IT Worker program, renamed the Software Development Pilot (SDP), continued to operate in Quebec and British Columbia for foreign nationals working in the seven identified information technology specialist categories, but revised the salary requirements for these foreign workers, requiring employers to pay higher minimum salaries to reflect the changing labour market in those areas.

This facilitated processing program expires at the close of the first quarter in British Columbia and is expected to similarly close in Quebec on March 31, 2011.

Launch of a Pilot Program to Expand the Post-Graduation Work Permit Program

While the assessment of LMO and LMO-exempt work permits have come under greater scrutiny in the past few months, and while new regulations limiting the issuance of temporary work permits for an extended period of time are set to come into force in April, CIC has also made some recent changes to facilitate the issuance of temporary work permits, particularly for high-skilled workers and recent graduates.

Effective January 31, 2011, the Post-Graduation Work Permit Program (PGWPP) was expanded to include international students who have completed career training programs of eight months or longer at select private educational institutions in British Columbia.

Specifically, under a two-year Pilot Program with British Columbia – which is to be in effect between January 31, 2011 and January 31, 2013 inclusively – the PGWPP has been expanded to include international students graduating from select British Columbia Education Quality Assurance (EQA)-designated private post-secondary institutions in programs of eight months or longer. All of the general eligibility criteria, conditions of the work permit and processing procedures for the PGWPP will continue to apply in conjunction with the following guidelines for the Pilot Program.

A work permit issued under this Pilot, like any other issued under the PGWPP, may be valid up to a maximum of three years depending on the duration of the program of study. If the program of study is two years or more, for example, the student may be eligible for a three-year work permit. Should the program of study be less than two years but at least eight months, the student may be eligible for a work permit lasting for a period equal to the duration of the studies.

This is welcome news to international students across Canada, particularly those currently studying at EQA-designated private post-secondary institutions in British Columbia, and with this opportunity to gain solid work experience in Canada is one more step towards encouraging individuals who have previously studied and worked here to apply for permanent residence.

PEI Announces New Investor Provincial Nominee Program

In February 2011, the P.E.I. government announced that it was set to introduce a new provincial nominee program over the next one-month period geared towards potential investors.

The Prince Edward Island Provincial Nominee Program (PEI PNP) expedites immigration to Canada for individuals and their families who meet provincial criteria in support of increased business and economic development in the province; increased supply of skilled workers; increased population; and the achievement of provincial demographic, social and cultural objectives. Currently, the PEI PNP provides for the facilitated processing of permanent residence applications under the following four categories:

- Immigrant Partner Category – A principal applicant who proposes to make an investment in an existing Prince Edward Island company and to take an active role in that company as a director or senior manager.
- Immigrant Entrepreneur Category – A principal applicant who proposes to establish a viable, new business in Prince Edward Island.
- Immigrant Connections Category – A principal applicant suggested by a Prince Edward Island based “champion” who meets settlement and employability criteria.
- Skilled Worker Category – A principal applicant with specialized skills and experience who fills a labour market need in Prince Edward Island.

Unlike previous P.E.I. investor programs, there will be a cap on the number of nominations that are accepted. Initially, the maximum number of nominations issued will be limited to 400 per year. The federal government has limited the cap to 400 applications initially. Under the former Investor PNP program that was in place in PEI from 2001 to 2008, foreign nationals could invest \$200,000 in a P.E.I. business and receive a Canadian visa. Although specific rules for eligibility are yet to be announced, the new proposed program will give investors the choice to either buy a one-third ownership in a P.E.I. company or invest \$1 million for five years as a loan. The new PEI PNP will also change to allow farmers and fishermen to be eligible under the program in order to encourage investment in the primary sectors.