

CHANGES IN IMMIGRATION LAW IN 2007

A. INTRODUCTION

In the past year, a number of new immigration programs were launched in Canada. As well, some significant changes in programs and policies were introduced.

B. LOW SKILLED WORKERS

On February 23, 2007, Canada's new Government announced a number of improvements to the Temporary Foreign Worker program, in addition to those announced in November and December of 2006.

One of the additional changes was to extend the duration of the Labour Market Opinion ("LMO") for low skilled workers from 1 year to 2 years. (An LMO, which is issued by Human Resources and Social Development Canada ["HRSDC"], is an assessment of the likely impact that a temporary offer of employment to a foreign worker will have on the Canadian labour market. A positive LMO supports the hiring of a foreign worker for a temporary position in Canada and is one requirement that Citizenship and Immigration Canada ["CIC"] considers when deciding to issue a work permit to the foreign worker.)

The extension affects those foreign workers working in Canada under the Pilot Project for Occupations Requiring Lower Levels of Formal Training (National Occupational Classification [NOC] C and D categories).

This change will be of significant benefit to employers who have to bridge the gap as well as low skilled workers who no longer have to depart Canada for 4 months and reapply after only 1 year of employment in Canada.

C. LIVE-IN CAREGIVERS

The Live-In Caregiver Program ("LCP") is designed for qualified temporary workers to provide in-home child care, senior home support or disabled care. Prior to February 23, 2007, the LCP permitted applicants to apply for permanent residence from within Canada after being employed as a caregiver after a minimum of 2 years within the 3 years following their entry into Canada. Previously, LCP work permits were issued for a period of 1 year, corresponding to the same duration as the LMO issued to the foreign worker. This meant that the average caregiver who remained in Canada with the same employer had to apply for at least two renewals of the caregiver's work permit.

Effective February 23, 2007, the duration of the LMO under the LCP has been increased from 1 year to a maximum of 3 years and 3 months, when requested by an employer. Live-in caregivers will be eligible for work permits for the same term.

The 3 year period corresponds to the amount of time presently granted to a caregiver to complete the requirements of the LCP in order to apply for permanent resident status and the additional 3 months allow a transitional period for the caregiver to make an application for permanent residence.

Therefore, both live-in caregivers and their employers will be relieved from having to apply to extend the LMO and work permit on an annual basis.

D. ONLINE FOREIGN WORKER APPLICATIONS

As of April 1, 2007, employers have been able to fill in and submit their “Foreign Worker Application (Application for a Labour Market Opinion) form over the Internet. Once all the questions on the Application have been answered and the form successfully submitted electronically, employers receive a confirmation of their submission and a tracking number to retain for future reference.

Accordingly, depending on the complexity of the particular application, completing and submitting the Foreign Worker Application form online will save employers time, enable HRSDC to efficiently respond to inquiries pertaining to LMO requests and reduce processing time in most cases.

E. FOREIGN CREDENTIALS REFERRAL OFFICE

On May 24, 2007, the Minister of CIC launched the first phase of the Foreign Credentials Referral Office (FCRO).

The FCRO is designed to assist internationally trained individuals who plan to work in Canada to have their credentials assessed and recognized more quickly.

This new office has been established to help people to navigate the complex system of foreign credential recognition in Canada. Specifically, the FCRO’s services will include:

- in-person services and a dedicated phone service, operated by HRSDC, at 320 outlets across Canada by Fall, 2007;
- an expanded online service that will assist individuals to identify occupations in Canada for which they may be qualified, provide them with detailed labour market information and refer them to the appropriate regulatory body; and
- increasing employer awareness of the processes for, and benefits of, engaging internationally trained and educated professionals.

F. CANADA-ALBERTA PROVINCIAL NOMINEE AGREEMENT

The Provincial Nominee Program (PNP) allows provinces and territories to nominate immigrants who possess specific skills that will contribute to the local economy in the respective jurisdictions. The general scheme is that the province or territory, as the case may be, nominates the particular candidate who wishes to work and reside in that province or territory. However, nominees must still meet federal admissibility requirements, including those relating to health, criminality and security.

On May 11, 2007, the Minister of CIC, the Premier of Alberta and Alberta's Minister of Employment, Immigration and Industry, announced the signing of a new Agreement for Canada-Alberta Cooperation on Immigration.

Under this new Agreement, there will no longer be a limit on the number of immigrants the Province can nominate for permanent residence each year. There is also no expiry date (i.e. the PNP under the new Agreement will run indefinitely, with Alberta providing targets to CIC to incorporate into the Federal Government's annual immigration levels planning).

In particular, the new Agreement will result in:

- Alberta being able to nominate more immigrants who have skills needed in the Province, for quicker processing by CIC;
- a new pilot project to expedite the entry of certain foreign health care professionals who have applied to go to Alberta;
- enhanced co-operation between the Federal Government and the Province in overseas immigration marketing initiatives; and
- a commitment to establishing mechanisms that would facilitate the Alberta obtaining the foreign workers it needs to meet its demands for a growing labour force.

G. CANADA-ONTARIO PROVINCIAL NOMINEE AGREEMENT

The Canada-Ontario Immigration Agreement that was signed on November 21, 2005. Under subsection 5.2.5 of the Agreement, Canada and Ontario agreed to implement a Pilot Provincial Nominee Program within twelve months of the signing of the Agreement.

On May 24, 2007, Ontario finally launched its Pilot Provincial Nominee Program (Pilot PNP). In the first year, the Pilot PNP will nominate 500 individuals.

The Pilot PNP is employer driven and has 2 categories—an Employer Category and a Multinational Investor Category. The former category is designed to assist employers fill labour shortages in 20 specific occupations in the health, education, manufacturing and construction sectors, while the latter category is available to companies making significant investments in the Province to bring in key employees who will contribute to the long-term success of the investment.

1. Employer Category

The Employer Category is comprised of 3 streams: professional, skilled worker and international student. In turn, each stream consists of various occupations.

Every individual who wishes to be nominated must have a permanent job offer. The job offer must be in one of 20 occupations on the Occupations List and the job must first be approved by the Pilot PNP.

The streams and the designated occupations thereunder are as follows:

- Professional stream—specialist physicians, pharmacists, physiotherapists, registered nurses, general practitioners/family physicians, audiologists and speech pathologists, medical laboratory technologists, medical radiation technologists, university professors and high end researchers;
- Skilled Worker stream—manufacturing sector (tool and die makers, industrial electricians, heavy-duty equipment mechanics machinists , heavy duty equipment mechanics, machinists and machining and tooling inspectors, construction millwrights and industrial mechanics); and construction sector (carpenters/framers/form workers, bricklayers, cement finishers, tile setters/drywall experts).
- International Student stream—available to recent or pending graduates from Ontario colleges and universities, from programs that correspond with the eligible fields on the Pilot PNP occupations list.

Procedurally, there are 2 steps in the application process: the Pre-screen Application (for employers) and Nominee Application (for individual applicants). Employers first start by submitting a Pre-screen Application to the Ontario Ministry of Citizenship and Immigration. Then, once the Pilot PNP approves the employers' positions, it will request the employers to have their candidates submit a nominee application package. Thereafter, a Provincial Nominee Certificate is issued for all successful nominees, who must then apply to CIC for permanent residence. The Pilot PNP will support all requests for work permits for nominees, in order to allow them to work in Ontario while waiting for their permanent residence applications to be processed.

2. Multinational Investor Category

The Multinational Investor Category is intended for companies that are making a significant investment in Ontario, which will lead to job creation and economic development.

In order to be eligible for the Pilot PNP, a company must meet the following requirements:

- make a qualifying investment in Ontario of at least Cdn\$10 million; and
- create a minimum of 25 net permanent full-time positions.

The application process under this category also involves a 2 step process. Employers are pre-screened by the Ministry of Economic Development and Trade. In its application, companies must specify the positions being applied for, the roles and responsibilities of each position, and the qualifications and experience required for each position. Companies may request up to a maximum of 5 employees, known as “nominees”, for each qualifying investment they make in Ontario. If the employer is approved for the program, the nominees then apply to the Pilot PNP for individual approval.