



Blaneys on Immigration

This newsletter is designed to highlight new issues of importance in immigration related law. We hope you will find it interesting, and welcome your comments.

Feel free to contact any of the lawyers who wrote or are quoted in these articles for more information, or call the head of our Immigration Law Group, Ian Epstein at 416.593.3915 or iepstein@blaney.com.

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“...a [start-up visa] program would enable entrepreneurs who establish start-up businesses using capital contributed by third parties... to seek permanent residence in Canada.”

IMMIGRATION MINISTER ANNOUNCES CONSULTATIONS FOR A CANADIAN START-UP VISA PROGRAM

Henry J. Chang

On April 18, 2012, Citizenship, Immigration and Multiculturalism Minister Jason Kenney launched consultations on the possible creation of a new program to attract immigrant entrepreneurs. Citizenship and Immigration Canada (“CIC”) will consult with industry associations in the development of a “start-up” visa program for innovative entrepreneurs in the coming months.

A “start-up” visa program differs from existing investor and entrepreneur options to the extent that the entrepreneur is not required to be the source of investment capital. Such a program would enable entrepreneurs who establish start-up businesses using capital contributed by third parties, such as venture capital firms or angel investors, to seek permanent residence in Canada.

Although the Government is only initiating consultations at this point, the proposed “start-up” visa program may ultimately resemble *S. 565: StartUp Visa Act of 2011* (introduced in the United States Senate on March 14, 2011) and *H.R. 1114: StartUp Visa Act of 2011* (introduced in the United States House of Representatives on March 15, 2011). *S. 565* and *H.R. 1114* (collectively, the “StartUp Visa Bills”) offer three

options for immigrant entrepreneurs:

1. Immigrant entrepreneurs living outside the U.S. would be eligible to apply for a StartUp Visa if a qualified U.S. investor agreed to financially sponsor their entrepreneurial venture with a minimum investment of \$100,000. After two years their business must have created five new jobs and raised not less than \$500,000 in additional capital investment, or generate not less than \$500,000 in revenue.
2. Immigrant entrepreneurs currently in the U.S.: (1) on an unexpired H-1B; or (2) who have completed a graduate level degree in science, technology, engineering, math, computer science, or other relevant academic discipline from an accredited United States college, university, or other institution of higher education, would be eligible for a StartUp Visa if:
 - a) They demonstrate annual income of not less than 250 percent of the Federal poverty level, or the possession of assets of not less than 2 years of income at 250 percent of the Federal poverty level; and
 - b) Have proven that a qualified U.S. investor agrees to financially back their entrepreneurial venture with a minimum investment of \$20,000.

After two years, their business must have created three new jobs and raised not less than

“The Government suggests that [a] pre-arrival assessment will give immigrants a sense of how Canadian employers are likely to view and value their education before they arrive in Canada...”



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\$100,000 in additional capital investment or generated not less than \$100,000 in revenue.

- Immigrant entrepreneurs living outside the U.S. would be eligible to apply for a StartUp Visa if they have controlling interest of a company in a foreign country that has generated, during the most recent 12-month period, not less than \$100,000 in revenue from sales in the U.S. After two years, their business must have created three new jobs and raised not less than \$100,000 in additional capital investment or generated not less than \$100,000 in revenue.

Although these StartUp Visa Bills are unlikely to be passed by Congress, it is hoped that the Government of Canada will implement its own “start-up” visa program soon. If it does, it will gain a significant competitive advantage over the United States.

According to CIC, this “start-up” visa initiative is an example of the type of small-scale programs that will allow it to try innovative approaches to economic immigration. Under the proposed changes, CIC can create new, short-term programs under the Economic Immigration Class. These programs would be limited to no more than 2,750 applications per year and would end after five years. If a program proves successful during the five-year trial period and CIC wishes to maintain it, CIC would be required to formally introduce the new economic class in the *Immigration and Refugee Protection Regulations*. ■

PROPOSED CHANGES TO ASSESSMENT OF ACADEMIC CREDENTIALS OF FEDERAL SKILLED WORKERS APPLYING FOR PERMANENT RESIDENCE IN CANADA

Suzanne Bailey

Another proposed change to Canada's Immigration System was announced on March 28, 2012 by Citizenship, Immigration and Multiculturalism Minister Jason Kenney. This change pertains to the assessment of educational credentials of Federal Skilled Workers applying for Permanent Residence in Canada.

Currently, foreign nationals who apply for permanent residence in Canada under the Federal Skilled category are not required to have their educational credentials evaluated prior to immigrating to Canada. Some have argued that this leads to problems for these individuals, in terms of finding jobs in their fields once in Canada, as Canadian employers are often unfamiliar with how these foreign academic credentials compare with Canadian credentials.

The proposed change would make it a requirement for all Federal Skilled Workers who wish to apply for permanent residence in Canada under the category to first have their foreign educational credentials assessed and verified by designated organizations before they arrive in Canada. This would amount to a pre-arrival assessment of their credentials. The Government suggests that this pre-arrival assessment will give immigrants a sense of how Canadian employers are likely to view and value their education before they arrive in Canada, and will also screen out people who don't have the proper education levels.

“...in an effort to deal with the backlog of pending Federal Skilled Worker (“FSW”) cases, the Government would enact legislation to cancel all applications filed prior to February 27, 2008.”



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While this proposed change may have some benefits, there are several foreseeable problems, in particular with respect to implementation. These potential problems include: finding impartial organizations that can provide fair and accurate credential assessments around the world, especially in remote countries and areas; ensuring accessible credential assessments are available around the world; the added cost of this credential assessment and the confusion it may cause immigrants, who may believe this pre-arrival assessment means they will qualify to become licensed in a regulated occupation when this is not necessarily the case. A positive credential assessment may also be misinterpreted by these immigrants to mean they will find jobs in their fields once they arrive in Canada, which again is not necessarily the case.

As of yet, there has been no announcement as to when the proposed change is to be implemented. When a further announcement is made, it will be interesting to see whether any of the problems identified above have been addressed. ■

GOVERNMENT OF CANADA TO CANCEL FEDERAL SKILLED WORKER CASES FILED PRIOR TO 2008

Henry J. Chang

During his 2012 Budget Speech, Canada's Minister of Finance announced that, in an effort to deal with the backlog of pending Federal Skilled Worker ("FSW") cases, the Government would enact legislation to cancel all applications filed prior to February 27, 2008. This is proposed legislation only, but if passed it will be retroactive to March 29, 2012.

Under the proposed legislation, Citizenship and Immigration Canada ("CIC") will close the files of FSW applicants who applied before February 27, 2008, and who have not had a decision on their file made by an immigration officer by March 29, 2012. This proposed legislation is expected to affect about 280,000 applicants, including their dependents.

CIC will begin the process of returning the full amount of fees previously paid by the affected FSW applicants, which could amount to \$130 million. For those who have already passed the selection criteria stage as of March 29, 2012 (approximately 20,000 people), CIC will continue processing their applications.

Several Provincial Nominee Programs ("PNPs") are currently reviewing the backlog of pending FSW applications to determine if any of them might be suitable for PNP nomination. For example, Opportunities Ontario has established an FSW Pilot Program (the "FSW Pilot") to accommodate these potential nominees.

Under the Ontario FSW Pilot, FSW applicants who fall under one of the following five occupations will have an opportunity to apply for an Ontario nomination leading to permanent residence:

1. Computer Analysts and Consultants (NOC 2171);
2. Software Developers (NOC 2173);
3. Interactive Media Programmers and Developers (NOC 2174);
4. Financial and Investment Analysts (NOC 1112); and

“If this proposal is implemented, it will be greatly beneficial to foreign workers who are already in Canada on work permits, as they will be eligible to apply for permanent residence in half of the current time.”

5. Mathematicians (NOC 2161).

CIC began contacting FSW applicants in these occupations in February 2012, inviting them to participate in the FSW Pilot. Applicants who are invited to participate in the FSW Pilot must submit their applications to Opportunities Ontario by May 4, 2012.

Applicants who are not invited by a PNP to seek a provincial nomination certificate have effectively lost their ability to immigrate to Canada based on their pending FSW application. They can, however, consider filing a new application under another permanent residence category, if they qualify. ■

CANADIAN EXPERIENCE CLASS: PROPOSAL TO REDUCE WORK EXPERIENCE REQUIREMENT TO ONE YEAR

Suzanne Bailey

We have recently seen a flurry of announcements from Citizenship, Immigration and Multiculturalism Minister, Jason Kenney, detailing changes and proposed changes to Canada's immigration system. The Government has stated that these changes are part of an overall effort to make Canada's immigration system more flexible and more responsive to Canada's labour market needs.

One significant proposed change is a regulatory one, designed to reduce the length of time a foreign national must work in Canada before being eligible to apply for permanent residence in Canada under the Canadian Experience Class (“CEC”).

Currently, to be eligible to apply, applicants under the temporary foreign worker stream of the CEC must have acquired two years of full-time work experience in Canada within the last three years. Under the proposed regulatory changes, the requirement would be reduced to one year of full-time work experience in Canada.

If this proposal is implemented, it will be greatly beneficial to foreign workers who are already in Canada on work permits, as they will be eligible to apply for permanent residence in half of the current time. Further, applicants should receive faster and more streamlined processing of their CEC applications.

There is no indication yet as to when this proposed change will come into effect, but we expect further details about the proposed changes to the CEC to be announced later in 2012. ■

CIC ANNOUNCES LANGUAGE TESTING REQUIREMENTS FOR CERTAIN PNP APPLICANTS

Henry J. Chang

On April 11, 2012, Citizenship, Immigration and Multiculturalism Minister Jason Kenney announced changes to Canada's Provincial Nominee Programs (“PNPs”). As of July 1, 2012, most PNP applicants for semi-skilled and low-skilled professions will have to undergo mandatory language testing of their listening, speaking, reading and writing abilities, and meet a minimum standard across all four of these categories, before they can qualify for a nomination certificate.

PNPs are established under Section 87(1) of the

“As of July 1, 2012, most PNP applicants for semi-skilled and low-skilled professions will have to undergo mandatory language testing of their listening, speaking, reading and writing abilities, and meet a minimum standard...”

Immigration and Refugee Protection Regulations. A PNP is similar to the Quebec Skilled Worker Program, which is established under IRPR 86(1). Both the Quebec Skilled Worker Program and the PNPs offer the provinces an opportunity to select immigrants based on their specific needs.

Under a PNP, individuals nominated by the province, together with their spouse and dependent children, are eligible to apply for Canadian permanent residence through Citizenship and Immigration Canada (“CIC”) under the Provincial Nominee Class. CIC will also give priority to processing permanent resident visa applications filed by provincial nominees. Given the considerable delays encountered by many permanent residence applicants, this priority processing makes immigration under a PNP program desirable.

Under the Provincial Nominee Class, each province establishes its own selection criteria. Applicants who wish to immigrate to a specific province as a provincial nominee must first apply to the province where they wish to settle. The province will consider the application based on their immigration needs and the applicant's intention to settle there. If the applicant is approved,

he or she will be given a provincial nomination certificate, which may be used to support an application for permanent residence.

Although there has been a trend to require mandatory language testing for federal economic immigrants, PNP programs have not yet imposed mandatory language testing on all PNP applicants. This latest announcement makes clear that language testing *will* be imposed, at least on semi-skilled and low-skilled PNP applicants, commencing on July 1, 2012. ■

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