



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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EMPLOYMENT TERMINATION AND MAINTENANCE OF LAWFUL STATUS IN CANADA

Henry J. Chang

Foreign nationals who hold work permits in Canada sometimes wonder what will happen to their immigration status if they quit their jobs or are terminated by their Canadian employers. The answer is not as simple as it appears and it may be surprising to some. A discussion of the relevant issues appears below.

Overview of Temporary Resident Status in Canada

All foreign nationals in Canada who do not hold permanent resident status are considered “temporary residents.” The term “temporary resident” therefore includes visitors, students, and foreign workers.

Temporary residents are permitted to remain in Canada for a finite period of time, but, subject to limited exceptions, they are not permitted to attend school or engage in employment without obtaining additional authorization. Therefore, a student will normally need to seek temporary resident status and a *study permit*. Similarly, a foreign worker will normally need to seek temporary resident status and a *work permit*.

Temporary resident “status” must be distinguished from a temporary resident “visa.”

Temporary resident status refers to the actual status given to a foreign national when he or she is admitted to Canada. On the other hand, a temporary resident visa is an entry document that is inserted into the passport of a foreign national by a Canadian Embassy or Consulate.

Unless the foreign national is considered visa-exempt, he or she must obtain a temporary resident visa at a Canadian Embassy or Consulate prior to arrival in Canada. The foreign national must then present the temporary resident visa to the Canada Border Services Agency (“CBSA”) at the time of entry. If CBSA is convinced that the foreign national is a *bona fide* temporary resident, he or she will be admitted to Canada in temporary resident status.

Visa-exempt foreign nationals do not need to obtain a temporary resident visa from a Canadian Embassy or Consulate; they may simply travel to Canada and request temporary resident status at the time of arrival. They still need to establish that they are *bona fide* temporary residents, but, if they are successful, they will be admitted to Canada in temporary resident status.

When a foreign national is admitted to Canada based on a work permit or study permit, he or she is given temporary resident status for the same duration as the work or study permit. So, a foreign worker who is granted a three-year work

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permit will be admitted as a temporary resident for the same period of time.

The Effect of Employment Termination on the Foreign Worker's Work Permit and Temporary Resident Status

Surprisingly, the termination of a foreign national's employment does not automatically invalidate his or her work permit. According to Section 209 of the *Immigration and Refugee Protection Regulations* (SOR/2002-227), a work permit becomes invalid when it expires or when a removal order that is made against the permit holder becomes enforceable. R209 clearly makes no reference to the termination of the foreign national's employment.

Although a work permit authorizes the foreign national to engage in employment with the employer listed on the work permit, it does not create a legal obligation to do so. As a result, even if the foreign national quits or is terminated by the employer, this does not automatically invalidate his or her work permit. Because the work permit remains valid after the termination of employment, the foreign national's temporary resident status also remains valid.

Of course, the work permit normally cannot be used to engage in employment with any other employer. If the foreign national quits or is terminated, it is unlikely that he or she will work for the original employer listed on the work permit at any time in the future.

Nevertheless, from a technical perspective, the work permit and the foreign national's underlying temporary resident status remain valid. As a result, the foreign national is entitled to remain in Canada as a temporary resident until the work

permit expires, as long as he or she does not violate status by working or studying without authorization (which could result in the commencement of removal proceedings).

The Effect of Employee Termination on a Spousal Work Permit and Temporary Resident Status

According to Paragraph 5.38 of the *Foreign Worker Manual*, spouses of skilled workers coming to Canada as temporary foreign workers may be authorized to work under R205(c)(ii) without first having a confirmed job offer. Work permits granted to spouses of skilled foreign workers are considered open. In other words, the spouse is authorized to work for any employer in any occupation while the open work permit is valid.

The following eligibility requirements apply to spousal work permits issued under R205(c)(ii):

- a) The principal foreign worker must be doing work at a level that falls within NOC Skill Levels 0 (managerial), A (usually requires university education), or B (usually requires college or apprenticeship training);
- b) The principal foreign worker must hold a work permit that is valid for a period of at least six month's duration; and
- c) The principal foreign worker and spouse must physically reside, or plan to physically reside, in Canada while working.

A foreign national whose employment terminates may wonder whether the work permit held by his or her spouse will continue to be valid, since issuance of the spousal work permit is conditional upon the principal foreign worker holding a valid work permit in a skilled position. The spousal work permit (and underlying temporary

resident status) should also continue to be valid for the following reasons:

- a) The eligibility criteria described above only require that the principal foreign worker hold a work permit that is valid for a period of at least six month's duration. Since the principal foreign worker's work permit should continue to be valid even after his or her termination, the spouse should satisfy the eligibility requirements as long as the principal foreign worker's work permit will remain valid for at least six months.
- b) R209 also applies to a previously-issued spousal work permit. Therefore, even if the spouse fails to satisfy the eligibility requirements at the present time, the previously-issued spousal work permit continues to be valid until it expires.

entry will often refuse to re-admit holders of valid work permits once they learn that the foreign national is no longer working for the employer listed on that work permit.

The legal basis for this practice is not entirely clear. However, CBSA officers at ports of entry are responsible for determining the admissibility of arriving foreign nationals who seek admission as temporary residents. Some CBSA officers probably take the position that possession of a valid work permit alone does not establish the foreign national's *bona fide* need to enter Canada, if the initial purpose for granting the work permit (i.e. employment with the stated employer) no longer exists. ■

The Effect of Employee Termination on Travel Abroad

Although foreign nationals who quit or have been terminated may normally remain in Canada as temporary residents until their work permits expire, they may find it difficult to re-enter Canada if they depart prior to the expiration of their work permits. CBSA officers at ports of

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