



# 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.

Editor:  
Melanie I. Francis  
416.597.4895  
mfrancis@blaney.com

## IN THIS ISSUE:

CIC Updates Foreign Worker Manual Provisions Relating to Intracompany Transferees  
Henry J. Chang

CIC Announces Temporary Pause on Most Federal Skilled Worker Applications and All Federal Immigrant Investor Applications  
Henry J. Chang

*“Both the C12 ICT and NAFTA ICT exemptions apply to executives, managers, and specialized knowledge workers who are transferring from one entity to another within the same multinational organization.”*

## CIC UPDATES FOREIGN WORKER MANUAL PROVISIONS RELATING TO INTRACOMPANY TRANSFEREES

Henry J. Chang

Citizenship and Immigration Canada ("CIC") recently updated its Foreign Worker Manual ("FWM"), which provides guidance to CIC and Canada Border Services Agency ("CBSA") officers who adjudicate work permit applications. The updated version includes revisions to sections that describe the C12 (Section 5.31) and NAFTA (Appendix G, Sections 4.1 and 4.3) intracompany transferee ("ICT") exemptions from the Labour Market Opinion requirement.

Both the C12 ICT and NAFTA ICT exemptions apply to executives, managers, and specialized knowledge workers who are transferring from one entity to another within the same multinational organization. These two ICT exemptions are essentially identical. However, the NAFTA ICT exemption applies to citizens of the United States and Mexico only, while the C12 ICT exemption applies to all nationalities.

The first change is a positive one. It clarifies that the foreign national must have worked outside Canada for a related entity of the Canadian employer for at least one year within the three years preceding the date of the initial work permit application. This is intended to address cases

where the foreign national has already been working in Canada for at least three years.

Prior to the clarification, there was some uncertainty whether such a foreign national could seek an extension of his or her ICT work permit after the first three years, despite the fact that the maximum period of stay is seven years for executives/managers and five years for specialized knowledge workers. If the relevant three-year period preceded the date of the foreign national's *current* application, rather than the date of the *initial* application, it would be impossible for any ICT to ever reach the maximum periods of stay allowed under these exemptions. The revision adopts the most logical interpretation.

Unfortunately, the second change is not as logical as the first, and seems to serve no purpose other than to inconvenience Canadian employers. The updated version of the FWM now states that the foreign national must be *currently* employed by the multinational organization that plans to transfer him or her to Canada.

CIC may be taking the position that a foreign national should not be considered an ICT unless he or she is actually transferring from the related foreign entity (i.e. employed by the related entity immediately prior to the transfer). However, this is an overly-mechanical interpretation and it violates established principles of NAFTA reciprocity.

*“OB 438 states that a temporary pause has been placed on new applications filed under the Federal Skilled Worker Program ("FSWP"), excluding applications received under the PhD eligibility stream and those with a qualifying offer of arranged employment.”*



Henry J. Chang is a partner in the firm's Immigration Law group. He is admitted to the practice of law in the Province of Ontario and the State of California. Henry is also an Executive Member of the Canadian Bar Association National Citizenship & Immigration Law Section. A recognized authority in the field of United States and Canadian immigration law, he lectures extensively on the subject in both the United States and Canada.

Henry may be reached directly at 416.597.4883 or [hchang@blaney.com](mailto:hchang@blaney.com).

Prior to the revision, a foreign national was only required to work outside Canada with the related entity for at least one year within the three years preceding the work permit application. In other words, the foreign national could have worked for the related foreign entity for one year during the previous three years but then have worked for an unrelated company during the year immediately prior to transferring to the Canadian employer. As long as the foreign national had at least one year of employment abroad with the related foreign entity during the three years prior to the application, he or she could still qualify as an ICT.

This has also been the longstanding position of United States Citizenship and Immigration Services and United States Customs & Border Protection when adjudicating ICT applications (known in the U.S. as L-1 petitions) filed on behalf of Canadian citizens. It is clear that the revision to the NAFTA ICT guidelines violates principles of reciprocity since the U.S. Government does not impose such a restriction on Canadians who apply as ICTs in the United States. Although principles of reciprocity do not necessarily apply to the C12 ICT exemption, given the fact that it was modelled after the NAFTA ICT exemption it seems illogical to impose this requirement on C12 ICTs also.

Until this problem is resolved, multinational organizations can still satisfy the new requirement by rehiring the foreign national abroad immediately before his or her transfer to the Canadian employer. Unfortunately, this is an added inconvenience for such employers. ■

## **CIC ANNOUNCES TEMPORARY PAUSE ON MOST FEDERAL SKILLED WORKER APPLICATIONS AND ALL FEDERAL IMMIGRANT INVESTOR APPLICATIONS**

Henry J. Chang

On June 29, 2012, Citizenship and Immigration Canada ("CIC") published Operational Bulletin 438 ("OB 438"), which provides guidance on the recently issued Ministerial Instructions that came into force on July 1, 2012.

OB 438 states that a temporary pause has been placed on new applications filed under the Federal Skilled Worker Program ("FSWP"), excluding applications received under the PhD eligibility stream and those with a qualifying offer of arranged employment. The effective date of the temporary pause was July 1, 2012. As of that date, the only FSWP applications that will be accepted are those filed by:

- a) Skilled workers with a valid offer of arranged employment.
- b) International students enrolled in a PhD program at a provincially or territorially recognized private or public post-secondary educational institution in Canada who:
  - 1) Have completed at least two years of study towards a PhD;
  - 2) Are in good academic standing at the time they apply;
  - 3) Are not recipients of an award requiring them to return to their home country to apply their knowledge and skills; OR

International students who graduated from a PhD program at a provincially or territorially

recognized private or public post-secondary educational institution in Canada who:

- 1) Graduated no more than 12 months before the date their application is received;
- 2) Did not receive an award which required them to return to their home country to apply their knowledge and skills (or did, but have satisfied the terms of the award).

A maximum of 1,000 applications from the PhD eligibility stream will be considered for processing each year. Applications will be considered in the order they are received.

The first cap year for the PhD stream began on November 5, 2011, and will end on October 31, 2012. Unless otherwise indicated in a future Ministerial Instruction, the cap will be automatically reset on November 1, 2012. ■

EXPECT THE BEST

**Blaney  
McMurtry**  
BARRISTERS & SOLICITORS LLP

2 Queen St. East, Suite 1500  
Toronto, Canada M5C 3G5  
416.593.1221 TEL  
416.593.5437 FAX  
www.blaney.com

---

*Blaneys on Immigration* is a publication of the Immigration Law Group of Blaney McMurtry LLP. The information contained in this newsletter is intended to provide information and comment, in a general fashion, about recent cases and related practice points of interest. The information and views expressed are not intended to provide legal advice. For specific legal advice, please contact us.

We welcome your comments. Address changes, mailing instructions or requests for additional copies should be directed to Kylie Aramini at 416 593.7221 ext. 3600 or by email to [karamini@blaney.com](mailto:karamini@blaney.com). Legal questions should be addressed to the specified author.