



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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CITIZENSHIP AND IMMIGRATION CANADA PROPOSES SIGNIFICANT AMENDMENTS TO THE IMMIGRATION AND REFUGEE PROTECTION REGULATIONS

Henry J. Chang

On August 18, 2012, Citizenship and Immigration Canada (“CIC”) published proposed regulatory amendments (the “Proposed Regulations”) in the *Canada Gazette*, which will significantly alter the Federal Skilled Worker Class (“FSWC”), create a new Federal Skilled Trades Class (“FSTC”), and liberalize the Canadian Experience Class (“CEC”). A detailed summary of these proposed changes is provided below.

Alterations to the FSWC

Background

As previously reported in July’s Blaneys on Immigration, on July 1, 2012, CIC imposed a “temporary pause” on the acceptance of new FSWC applications. The reasons given for this temporary pause were to allow CIC to manage inventory pressures and to align future intake with the implementation of proposed regulatory changes to the Federal Skilled Worker Class. However, no details of the proposed regulatory changes were provided until now.

The recently-published Proposed Regulations now confirm that CIC intends to rebalance the number of points given among the existing FSWC criteria and to impose additional requirements on some criterion before points will be awarded. A summary of the key changes appears below.

Minimum Language Proficiency Standards and Higher Points for Language Ability

The Proposed Regulations will require minimum language abilities in order to qualify for the FSWC. It will also significantly increase the maximum points awarded for fluency in one official language from 16 to 25. Although the Minister of Citizenship, Immigration and Multiculturalism (the “Minister”) will publish the language threshold at a later date, it is expected that the threshold will be set at Level 7 of the Canadian Language Benchmark (“CLB”) for all four abilities (speaking, listening, reading, and writing); this threshold corresponds to having “adequate intermediate proficiency.”

The maximum number of points for the second official language will be reduced from 8 points to 4 points, for abilities at CLB 5 and above. This reflects CIC’s research and feedback, which found that this factor did not contribute to positive economic outcomes for the majority of applicants.

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Age Criteria to Favour Younger Workers

CIC states that younger immigrants tend to integrate more rapidly into the labour market, and they usually spend a greater number of years contributing to Canada's economy. As a result, the Proposed Regulations will favour younger immigrants by awarding a maximum of 12 points for applicants from 18 to 35 years of age (compared to applicants from 21 to 49 years of age who receive maximum points under the present criteria). Applicants between 36 and 46 years of age will receive diminishing points and those 47 years of age or older will receive no points.

Fewer Points for Foreign Work Experience

CIC states that foreign work experience is largely discounted by Canadian employers and is a weak predictor of economic success. Therefore, the Proposed Regulations will reduce the total number of points given for work experience from 21 to 15 and will increase the years of experience required to achieve the maximum number of points from 4 years to 6 years.

Foreign Credential Evaluation Required for Education Points

The Proposed Regulations will authorize the approval of organizations and professional bodies as designated credential evaluators. These designated evaluators will authenticate individual foreign credentials and determine their equivalent in Canada for the purposes of the FSWC.

Where an applicant has listed a regulated occupation in their application, he or she will be required to submit the relevant designated professional body's foreign credential evaluation, establishing that the foreign credential is equivalent to the

Canadian educational credential required to practice in that occupation. Applicants in non-regulated occupations must submit a foreign educational assessment provided by a designed organization to demonstrate that their educational credential is equivalent to a Canadian educational credential.

Applicants whose credentials do not exist in Canada, or who do not have a credential equivalent to the completed Canadian version, in Canada will not be eligible under the FSWC.

Labour Market Opinion ("LMO") Required for Arranged Employment

CIC states that applicants who immigrate with a valid job offer earn 79% more in wages in the first three years after arrival than people without arranged employment. However, the potential for fraud requires a more rigorous assessment of the employer and the job offer.

The Proposed Regulations will require employers to apply for an LMO from Human Resources and Skills Development Canada ("HRSDC") on behalf of an applicant under the FSWC, in the same manner as temporary foreign workers; the arranged employment opinion ("AEO") currently being used will also be eliminated. FSWC applicants who obtain an approved LMO from HRSDC will continue to receive 15 points (10 points for arranged employment and 5 points for adaptability).

R82(2) of the current regulations define "arranged employment" to include a skilled worker in Canada who holds an LMO-exempt work permit issued pursuant to:

“Adaptability points for the accompanying spouse or common-law partner’s education (previously 3-5 points) will no longer be awarded under the Proposed Regulations.”

- a) R204(a) [international agreements such as the NAFTA or GATS];
- b) R205(a) [including C10 significant benefit to Canada and C12 intracompany transferee work permits]; or
- c) R205(c)(ii) [for reasons of public policy relating to the competitiveness of Canada's academic institutions or economy, including C41 work permits for spouses of skilled workers, C42 work permits for spouses of foreign students, C43 post-graduation work permits for students, and C25 off-campus work permits for students].

Applicants who hold these types of LMO-exempt work permits and have a qualifying job offer do not require an LMO or AEO in order to establish arranged employment.

Under the Proposed Regulations, the definition of arranged employment will now be limited to skilled workers who hold an approved LMO or hold an LMO-exempt work permit under R204(a) [international agreements]; such work permit holders must also establish that their employer is making a qualifying job offer (i.e. permanent and non-seasonal). No explanation has been given for the elimination of the other LMO-exempt work permits from the definition of arranged employment.

Change in Adaptability Factors

As before, the total number of adaptability points will remain at 10. Under the Proposed Regulations, adaptability points may be awarded as follows (up to the maximum of 10):

- a) The maximum number of points (10, up from 5) will be awarded if the principal applicant has qualifying prior work experience in Canada (a minimum of 1 year at NOC 0, A, or B).
- b) An accompanying spouse or common-law partner who has qualifying prior work experience in Canada will continue to be awarded 5 points.
- c) Points for previous study in Canada by the principal applicant or accompanying spouse or common-law partner will remain at 5. It must have been full-time study in a program of at least two years, earning the necessary credits to successfully complete two years of study. For the purposes of adaptability, secondary school is accepted as an eligible program of study.
- d) As before, 5 points will be awarded if the principal applicant has arranged employment.
- e) As before, 5 points will be awarded if the principal applicant, spouse, or common-law partner has a relative in Canada (although the relative will now need to be 18 years of age or older). In addition, adaptability points will not be awarded for spouses who are Canadian citizens or permanent residents living in Canada, since they can sponsor applicants through the Family Class.
- f) If the accompanying spouse or common law partner has language ability in either official language at CLB 5 or higher, 5 points will be awarded.

Adaptability points for the accompanying spouse or common-law partner’s education (previously

“...the Proposed Regulations would also enable officers to provide a substituted evaluation if they believe that the applicant’s ability or inability to meet or not meet the minimum requirements of the class is not a sufficient indicator of whether he or she may become economically established in Canada.”

3-5 points) will no longer be awarded under the Proposed Regulations.

Creation of the FSTC

The new FSTC will allow skilled tradespersons with experience in specific occupational areas to seek permanent residence. The following NOC B occupational areas will be eligible under the FSTC:

- a) Industrial, Electrical and Construction trades;
- b) Maintenance and Equipment Operation Trades;
- c) Supervisors and Technical Occupations in Natural Resources, Agriculture, and Related Production;
- d) Processing, Manufacturing, and Utilities Supervisors and Central Control Operators;
- e) Chefs;
- f) Cooks;
- g) Bakers; and
- h) Butchers.

Applicants for the FSTC will be required to satisfy four minimum requirements:

- a) The applicant must have a qualifying offer of employment (from up to two employers in Canada) having a collective duration of at least one year, or a certificate of qualification from a provincial or territorial Apprenticeship Authority. Where an offer of employment is used, the employer would be required to obtain a positive LMO.
- b) The applicant must possess language proficiency, as evidenced by a test from a design-

ated language testing organization, establishing that the applicant’s abilities meet the threshold set by the Minister in all four language abilities (speaking, reading, writing, and listening). Initially, the threshold is expected to be set at CLB 5 for all four language abilities.

- c) The applicant must possess at least twenty-four months of work experience (after qualification or certification in the country where the work was performed, if applicable) in the same skilled trade within the last five years.
- d) The Applicant must possess qualifications that satisfy employment requirements as described in the NOC, except for certification and licensing requirements, which are difficult to obtain outside Canada.

As with the FSWC, the Proposed Regulations would also enable officers to provide a substituted evaluation if they believe that the applicant’s ability or inability to meet or not meet the minimum requirements of the class is not a sufficient indicator of whether he or she may become economically established in Canada.

Liberalization of the CEC

The Proposed Regulations would reduce the existing work experience requirement for temporary foreign workers under the CEC from the current requirement of twenty-four months of full-time employment (or equivalent) in Canada to twelve months of full-time employment (or equivalent) in Canada, within the preceding thirty-six months. Only applicants with NOC 0, A, or B work experience would continue to qualify for the CEC.

The current CEC regulations allow applicants to compensate for a lower level in one language ability with a higher level in another, resulting in a process that CIC characterizes as complicated and confusing for both applicants and visa officers. The Proposed Regulations will instead set a minimum language threshold in each of the four language abilities (speaking, reading, writing, and listening). Although the Minister will publish the language threshold at a later date, it is expected to be set at CLB 7 for NOC 0 and A applicants and CLB 5 for NOC B applicants, the same thresholds currently applied under the existing regulations. ■

EXPECT THE BEST

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