



CIC Issues Ministerial Instructions Relating to Express Entry

by Henry J. Chang

Originally published in *Employment Update* (December 2014)



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.

Introduction

On December 1, 2014, Citizenship and Immigration Canada ("CIC") published Ministerial Instructions relating to its proposed Express Entry System ("Express Entry"). Express Entry will come into effect on January 1, 2015, at 12:00 noon EST, and will apply to the following categories:

- a) The Federal Skilled Worker ("FSW") Class;
- b) The Canadian Experience Class ("CEC");
- c) The Federal Skilled Trades ("FST") Class; and
- d) Members of the Provincial Nominee Class who fall within the Express Entry Stream of a Provincial Nominee Program ("PNP").

Express Entry will not apply to any existing PNP streams. Instead, each province will have the option of establishing a new Express Entry Stream under its existing PNP.

Overview

Potential candidates will be permitted to submit an online Express Entry profile (i.e. an "Expression of Interest"). At this time, they will be asked to provide information about their: (a) skills, (b) work experience, (c) language ability, (d) education, and (e) other relevant factors. However, if a candidate is unable to submit an Expression of Interest online, due to a physical or mental disability, it may be submitted by another means made available by CIC for that purpose.

Candidates who meet the applicable eligibility requirements of at least one of the classes described above (i.e. FSW, CEC, FST, or PNP Express Entry stream) will be accepted into a special pool of candidates (the "Express Entry Pool"). However, acceptance into the Express Entry Pool does not guarantee that a particular candidate will be issued an Invitation to Apply ("ITA") for permanent residence. Instead, candidates in the Express Entry Pool will be ranked against each other using a point-based system called the Comprehensive Ranking System; these points will be awarded using the information contained in each candidate's Expression of Interest. The candidates with the highest ranking will be periodically selected from the Express Entry Pool.

Candidates may not receive an ITA unless they satisfy the following requirements:

- a) They must satisfy the eligibility requirements of at least one of the classes described above (i.e. FSW, CEC, FST, or PNP Express Entry stream).
- b) They must have a positive Labour Market Impact Assessment ("LMIA"), if they are working in Canada under a work permit issued pursuant to: (1) an international agreement between

Canada and one or more foreign countries (such as a work permit based on the NAFTA or similar free trade agreements), or (2) a federal-provincial agreement (such as a work permit based on a PNP Nomination Certificate). This language appeared to preclude the issuance of an ITA to certain foreign workers who would not otherwise require an LMIA (such as a NAFTA intracompany transferee), unless their Canadian employer obtained one on their behalf. However, CIC has recently confirmed that this language was only intended to clarify that applicants in Canada under LMIA-exempt work permits would not obtain points for arranged employment; they are still eligible to receive an ITA if they are selected.

- c) Within 30 days from the date that they submit their Expression of Interest, they must register with the Job Bank maintained by Employment and Social Development Canada (“ESDC”), if they do not have a qualifying offer of arranged employment or are not named in a Nomination Certificate issued under a PNP Express Entry stream at the end of that period.

If someone receives an ITA, they will have sixty days to submit an online application for permanent residence. CIC expects to process the majority of complete applications (meaning those with all the necessary supporting documents) in six months or less.

Candidates accepted into the Express Entry Pool may remain in the pool for up to twelve months, starting on the date that their Expression of Interest was submitted. If they do not receive an ITA during this period, they will be removed from the pool. However, they may submit a new Expression of Interest; if they still satisfy the criteria, they can re-enter the Express Entry Pool.

If a candidate declines the invitation within the sixty-day period, the remaining portion of the original one-year period of their inclusion in the Express Entry Pool will continue. However, if the candidate does not decline the invitation within the sixty-day period and does not make an application for permanent residence within that period, the Expression of Interest will end, regardless of the portion of the one-year period that remains.

Mandatory Submission of Educational Credential Assessments and Language Proficiency Results

Candidates will be required to provide the results of an assessment of their proficiency in English or French (issued by a designated language testing organization or institution) at the time that they submit their Expression of Interest. Language proficiency assessments are valid for a period of two years from the date that they are issued.

In addition, candidates who are relying on foreign education will be required to provide the results of a valid educational credential equivalency assessment (issued by a designated credential evaluation organization or institution) at the time that they submit their Expression of Interest. Educational credential assessments are valid for a period of five years from the date that they are issued.

The Comprehensive Ranking System

The ranking of candidates who are included in the Express Entry Pool will be based on the total number of points assigned to each candidate, using the information provided in their Expression of Interest and in accordance with the Comprehensive Ranking System, which considers the following factors:

- a) Core human capital factors;
- b) Accompanying spouse or common-law partner factors;
- c) Skill transferability factors; and
- d) Factors relating to a provincial nomination or a qualifying offer of arranged employment.

The total number of points that may be assigned under the Comprehensive Ranking System is 1200 points. These points will be allocated as follows:

- a) Where a candidate has no accompanying spouse or common-law partner: (i) a maximum of 500 points for core human capital factors, (ii) a maximum of 100 points for skill transferability factors, and (iii) a maximum of 600 points for either a provincial nomination or a qualifying offer of arranged employment; and
- b) Where a candidate has an accompanying spouse or common-law partner: (i) a maximum of 460 points for the core human capital factors, (ii) a maximum of 40 points for accompanying spouse or common-law partner factors, (iii) a maximum of 100 points for skill transferability factors, and (iv) a maximum of 600 points for either a provincial nomination or a qualifying offer of arranged employment.

Further details regarding the Comprehensive Ranking System appear [here](#).

Conclusion

Express Entry will add an additional complex layer of bureaucracy to the FSW, CEC, and FST classes. It will also significantly increase the level of uncertainty for candidates seeking permanent residence under these classes, since it will no longer be possible to reliably predict how long it will take for an applicant to be selected from the Express Entry pool. Many applicants could be included in the Express Entry Pool only to have their Expressions of Interest cancelled one year later if they are not selected.

The Government of Canada has suggested a processing time of six months or less for candidates who are issued an ITA, which is a significant improvement over current processing times. However, these improved processing times may not be worth the increased uncertainty that will result from the implementation of Express Entry.

We will be watching to see how these cases are processed once Express Entry begins on January 1, 2015. ■