

UPDATE ON CANADIAN IMMIGRATION LAW

MAY 1999

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Ian S. Epstein

Direct Line: (416) 593-3915

E-Mail: iepstein@blaney.com

Suzanne Bailey

Direct Line: (416) 593-3903

E-Mail: sbailey@blaney.com

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EMPLOYMENT VALIDATION

If an applicant is not exempt from having to obtain an Employment Authorization or does not qualify under the North American Free Trade Agreement ("NAFTA"), General Agreement on Trade Services ("GATS") or any other exemption or pilot project, he/she must first obtain an Employment Validation from Human Resource Development Canada ("HRDC"). This application is made by the employer, not the applicant. If the application is successful, the employee can then apply for an Employment Authorization, which is then generally not difficult to obtain.

To obtain an Employment Validation, the employer must essentially demonstrate that employment opportunities for Canadians or landed immigrants will not be adversely affected. In other words, the employer must demonstrate that there are no Canadians or landed immigrants who can fill the position. Advertising the position is sometimes, but not always, required. Generally speaking, Employment Validations are difficult to obtain and other options should be explored before pursuing this category.

COMPUTER SOFTWARE SPECIALISTS/PILOT PROJECT

The computer software pilot project which was launched by the Department of Human Resources Development Canada ("HRDC") in 1997 continues to be in force. We anticipate that it will continue to be in force until at least the end of December, 1999. Under this new project, certain computer software programmers who would otherwise require an Employment Validation no longer have to do so. This new project has been implemented in light of the shortage of several categories of computer software professionals in Canada:

Embedded Systems Software Designer

Software Products Developer

MIS Software Designer

Multimedia Software Developer

Senior Animation Effects Editor

Software Developer - Services

Telecommunications Software Designer

Each of the above-mentioned categories has very specific educational requirements. In addition, experience in specific computer languages is mandatory for each of the categories. In order to obtain an Employment Authorization pursuant to the Computer Software Specialists Pilot Project, a potential applicant must satisfy an Immigration Officer that he/she possesses all of the requisite education and experience requirements.

Unlike some other types of Employment Authorizations, which can be obtained at a port of entry, Employment Authorizations issued pursuant to Computer Software Specialists Pilot Project must be applied for at a Canadian Visa post abroad.

Employment Authorizations obtained pursuant to the Computer Software Specialists Pilot Project can be modified and/or extended in Canada.

SPOUSAL EMPLOYMENT AUTHORIZATION PILOT FOR HIGHLY-SKILLED TEMPORARY WORKERS

Recently, Citizenship & Immigration Canada ("CIC") commenced a pilot project which is designed to facilitate the issuance of Employment Authorization (work permits) to spouses of highly-skilled temporary workers in Canada without a validated offer of employment. In order for a spouse to be eligible to participate in this project, the temporary worker must have a valid Employment Authorization of at least six (6) months in duration and his/her occupation in Canada must be of a specific management level or a specific skill level which is contained in the National Occupation Specification system, which is being used by CIC. In order for a spouse for an above-mentioned person to obtain an Employment Authorization pursuant to this pilot, the spouse must obtain a written job offer from an employer before an application for an Employment Authorization can be filed. This new initiative by the Government is making Canada more competitive, as it is now a lot easier for spouses of highly-skilled foreign nationals to be able to work in Canada during their spouse's period of employment in Canada, thereby making it more attractive for foreign nationals to choose Canada as a place to relocate to temporarily.

ONTARIO HEALTH INSURANCE PLAN ("OHIP")

The general rule is that only Canadian citizens and permanent residents of Canada are eligible for OHIP. This means tourists in Ontario, visitors, foreign students and people living in Ontario temporarily are not eligible for OHIP, subject to certain exceptions as provided for in the Regulations. The most notable exception for our purposes is coverage for Temporary Employment Authorization holders and their dependents.

1. TEMPORARY EMPLOYMENT AUTHORIZATION HOLDERS

For Temporary Employment Authorization holders to be eligible for OHIP coverage, they must show:

(a) Employment Authorization

Their Employment Authorization must show as a term and a condition that they are eligible to work for a named Ontario employer at a specific occupation. They are usually coded a "Case 20" type worker which is shown at the top left corner of their Employment Authorization;

(b) Proof of Residency

They must provide 2 pieces of identification verifying their residency in Ontario;

(c) Proof of Length of Employment

The person's employer must have the intention of employing them for 3 years. Often Employment Authorizations are granted for a period of 1 year only at first instance. In these circumstances, a person should produce a letter from the employer confirming the employer's intention to employ the person for 3 years.

2. PROCEDURE FOR APPLYING FOR OHIP COVERAGE

(a) Anyone 15« years or older must personally attend at an OHIP office at one of the locations listed on the enclosure attached hereto. An agent cannot attend on a person's behalf since the person's photograph must be taken which is shown on their OHIP card.

(b) A person must present the following documents at the OHIP office:

- (i) Immigration status documents
 - Record of Landing
 - Employment Authorization
 - Accompanying Dependents (Student Authorization or Visitor's Record)
 - Minister's Permit

- (ii) Proof of residency in Ontario document showing name and address
 - Ontario driver's license
 - telephone, cable, television, hydro bill
 - mortgage or lease agreement
 - income tax assessment
 - insurance policy
 - school report

- (iii) Identification card with signature
 - SIN card
 - credit card
 - bank card
 - employee identification card
 - library card
 - marriage license
 - driver's license
 - passport

You cannot use the same document twice to prove numbers (i), (ii) and (iii) above.

- (c) Spousal Sponsorship

In addition to satisfying numbers (ii) and (iii) above, persons who have been sponsored for permanent residence to Canada by their Canadian spouses must also show:

(i) proof that their Spousal Sponsorship Application has been approved in principal; and

(ii) proof that the person has passed their medical examination.

Letters can be obtained from Citizenship and Immigration proving the foregoing.

3. FEE

There is no fee for an OHIP card.

4. PROCESSING TIME

The processing time for OHIP applications is about 3 months before the OHIP card is mailed out. There is also 3 month waiting period for OHIP coverage.

5. EXPIRY DATE

The expiration of a person's OHIP card usually coincides with their Employment Authorization (or Visitor's Record or Student Authorization in the case of accompanying dependents). OHIP coverage must also be renewed when a person renews their immigration status.

SOCIAL INSURANCE NUMBERS ("S.I.N.")

Applications for SIN cards are made to the Canada Employment Centre closest to where a person lives. There is no fee for a first time applicant, although there is a \$10.00 fee for a replacement card.

1. PROCEDURE & DOCUMENTS

A person or their agent must attend at the Canada Employment office and present:

- (a) completed and executed Application Form;
- (b) proof of immigration status - Employment Authorization
 - Visitor's Record
 - Student Authorization
 - Minister's Permit
- Record of Landing; and
 - (possibly) a marriage certificate.

Original documents are acceptable. Photocopies are only acceptable if they have been certified by a Notary Public or a Commissioner of Oaths.

2. PROCESSING TIME

Usually it takes approximately 2 - 3 weeks to process an Application for a SIN card. However, if urgency can be demonstrated, an expedited SIN number can be obtained within 24 - 48 hours. In this instance, the number is given within that time frame, although the actual card does not follow until some 2 - 3 weeks later.

CANADA CUSTOMS

Canada Customs has its own classification system for people entering Canada. For our purposes, the most important customs classifications are: (1) temporary residents; and (2) permanent residents.

Canada Customs defines temporary residents primarily as Temporary Employment Authorization and Student Authorization holders who intend to live in Canada temporarily for less than 3 years.

Customs defines permanent residents as persons who enter Canada with the intention of establishing (for the first time) Canada as their place of permanent residence and intend upon living in Canada for greater than 12 months. This would favour people who have applied for landed immigrant status in Canada.

1. TEMPORARY RESIDENTS

(a) Personal and Household Effects

Temporary residents can bring their personal and household effects into Canada free of duties and taxes. This includes cars they own, but not leased vehicles. Upon leaving Canada, temporary residents must take with them every item they brought into Canada.

Before coming into Canada, temporary residents should prepare a list (in duplicate) of all the items they intend to bring into Canada, including their serial number, make, model and approximate value. This list should be divided into 2 sections: (1) the goods the person is bringing with them; and (2) the goods to follow. The permanent resident will present this list to the customs officials at the port of entry.

Jewellery should be identified individually on the list of goods submitted to customs. As jewellery is difficult to describe, it is advisable to follow the wording used in a person's insurance policy or in their jeweller's appraisal. In certain circumstances, a person may consider adding a photograph of the particular piece of jewellery, if especially valuable.

A customs officer could require a temporary resident to post a refundable deposit. This deposit is intended to cover taxes and duties that would be payable if the person sold their goods while in Canada. To avoid or minimize the

risk of being requested to post a security deposit, temporary residents should obtain a Letter of Undertaking from their employer. In that letter, the employer will guarantee that the conditions of importation will be complied with and that any duties and taxes which become payable will be paid by the employer on behalf of the employee.

We have prepared many of the above-noted letters on behalf of employers, which they in turn give to their employees for presentation to the customs official at a port of entry.

After reviewing the list of goods with the customs officer, the officer will then prepare Form B4, Personal Effects Accounting Document, setting out the list of goods. The officer will assign the person's B4 Form a file number and give the person a Receipt Copy. For goods following at a later date, the person will present this Receipt Copy in order to claim these goods free of duties and taxes.

(b) Cars

Temporary residents do not have to meet Federal Safety and Emission Standards for bringing their cars into Canada on a temporary basis. Upon arriving at a port of entry, a temporary resident must show proof of ownership and registration of the vehicle of their immigration status.

The person will then be asked to fill out a document which will include information about himself and an address in Canada. Alternatively, the person will be given a card and asked to report to another local customs office in a few days. This should not alarm the person as it usually means that the customs officer at the port of entry was simply too busy to deal with the matter at the border.

Enquiries should also be made with the Provincial authorities as to whether an employee can drive in Canada with a foreign license. Generally, a person can drive in Canada with a valid foreign licence for up to 60 days. After 60 days, the person must attend at a Ministry of Transportation office, present their foreign license, a piece of identification with a photograph and signature and pay a fee of \$50.00. The person will then receive a temporary license until they are mailed a permanent Ontario license.

2. PERMANENT RESIDENTS

(a) Personal and Household Effects

Permanent residents can also bring their personal and household effects into Canada free of taxes and duties, provided those goods were in the person's ownership, possession and use in the normal course of their day to day living before they arrived in Canada.

Goods for use in a business or manufacturing establishment are not exempt and taxes and duties must be paid on these goods.

(b) Cars

Company owned and company leased vehicles are not exempt from taxes and duties and are subject to the usual customs assessment.

There are no duties and taxes on non-commercial vehicles owned by a permanent resident including:

Cars;

Motorcycles;

Camper trucks;

Motor Homes;

Snowmobiles; and

Pick-up Trucks.

However, the difference for permanent residents (as compared with temporary residents) is that Transport Canada Safety and Emissions Standards do apply to permanent residents wishing to import their foreign vehicles. Accordingly, prior to importation, enquiries should be made of the Registrar of Imported Vehicles to check the eligibility of importing their particular vehicle. Some vehicles can never comply with Canadian Safety Standards because of their original design, which will amount to those vehicles being denied entry to Canada.

The Registrar of Imported Vehicles is a private agency that Transport Canada has contracted with, to administer a program to ensure foreign cars comply with Canada's Safety Standards.

In addition to making inquiries of the Registrar of Imported Vehicles, inquiries should also be made of the person's provincial Department of Motor Vehicles to see if there are any provincial taxes on the importation of the foreign vehicle.

Below we have set out the procedure for importing a vehicle into Canada from the U.S. only. The importation process is a more complicated one from other countries. We refer you to the Road Safety & Motor Vehicles Regulation Directorate, Transport Canada in Ottawa (613) 998-2174 or 1-800-511-7755 for further information in that regard.

(i) Importing U.S. Vehicle

Upon arriving at the border, the permanent resident will have to complete the appropriate paper work and show:

1. proof of purchase (title, bill of sale);
2. vehicle identification number (VIN);
3. evidence the vehicle was built to U.S. standards (by producing the Compliance Label or a manufacturers letter);
4. proof that the vehicle was not subject to U.S. recalls or that the recall work has already been completed; and
5. payment of fees (\$210.00 Canadian at designated posts and \$262.00 Canada at non-designated ports). This can be paid by cash, VISA or Master Card.

After completing the paper work, showing the appropriate documents and paying the necessary fee, the customs officer will stamp a form for the person. This then allows the person to bring the vehicle into Canada on the condition that he

brings the vehicle into compliance within 45 days. This compliance involves an inspection and modification process.

After clearing customs and coming into Canada, the person will then receive a kit in the mail containing documents that will fully explain the inspection and modification process. The inspection process involves the person taking their vehicle to a Regional Inspection Centre where the inspector will check the vehicle. If modifications are necessary, the person will be required to take their vehicle to a qualified service provider to have the modifications carried out.

After the Regional Inspector is satisfied that the vehicle meets Canadian Safety Standards, he will stamp and initial the person's "Vehicle Import Form". The Inspector will then send a report to Canada Customs.

Thereafter, the person will receive a Conformity Authorization Number in the mail, as well as a Compliance Label. The Conformity Authorization Number must be added to the person's Vehicle Import Form and the Compliance Label must be affixed to the vehicle. The person will then be ready to go to their provincial licensing office in order to license their vehicle.

3. WEDDING GIFTS

If you were married 3 months before coming to Canada or if you plan to be married within 3 months after arriving into to Canada, you can bring wedding gifts to Canada free of taxes and duties.

4. PETS

Agriculture Canada controls the entry of animals into Canada because the animals might harbour pests or diseases harmful to people, livestock, crops and forests.

Cats and dogs can be brought into Canada without an import permit provided they are accompanied by a Veterinarian's Certificate showing the pet has been vaccinated against rabies not less than 30 days and not more than one year preceding the date of importation. The Veterinarian's Certificate must identify the animal by breed, age, sex, colouring and any distinguishing marks.

Cats and dogs can be shipped to Canada by air, boat or vehicle.

All cats and dogs presented for entry to Canada which are not accompanied by a Veterinarian's Certificate will be subjected to quarantine of one month at the person's expense. They will also receive a rabies vaccination upon admittance to the quarantine station.

Seeing eye dogs may be imported into Canada without any restriction.

For importing birds or other species, inquiries should be made of the Convention Administrator, Canadian Wildlife Service, Environment Canada at 1-819-997-1840. Canada is a signatory to the Convention of International Trade in Endangered Species of Wild Flora and Fauna. This international agreement restricts the movement of certain birds and other endangered species.

5. FIREARMS

Canada has very stringent gun control laws. Accordingly, enquiries should be made with the Chief Provincial Firearms Officer via the regional customs office before bringing any firearms to Canada.

RETURNING RESIDENT PERMITS

In today's increasing global economy, people often travel abroad in order to carry out their business commitments or commitments to their employers. Landed immigrants to Canada are not an exception to this rule. However, according to section 24(2) of the Immigration Act, when a permanent resident is outside of Canada for more than 183 days in any one twelve (12) month period, that person is deemed to have abandoned Canada as his place of permanent residence, unless that person satisfies an Immigration Officer or an adjudicator that he/she did not intend to abandon Canada as his/her place of residence. The wording of this section is mandatory, and if a person falls within the description of this section, the person is presumed to have abandoned Canada, and can potentially lose his/her permanent residence status as a result. In order to avoid such a situation, section 26 of the Immigration Regulations states that when a permanent resident intends to leave Canada for any period of time or is outside of Canada, such permanent resident may make an application to an Immigration Officer for a Returning Resident Permit and an Immigration Officer shall issue a Returning Resident Permit if certain conditions are satisfied. The most important conditions that must be satisfied in order to obtain a Returning Resident Permit, is that the applicant must persuade the Immigration Officer that he/she intends to leave Canada or has left Canada for one of the four (4) following purposes:

1. For the purpose of carrying out his/her duties as a representative or employee of a corporation or business organization established in Canada or as a representative or employee of the Government of Canada or a province or a municipality in Canada;
2. For the purpose of upgrading his/her professional, academic or vocational qualifications;
3. For the purpose of accompanying a member of his family who is a Canadian citizen or has been issued a Returning Resident Permit; or
4. Any other circumstance that the Immigration Officer deems appropriate.

With the last enumerated purpose, it is important to provide proof which establishes that a landed immigrant still has a clear intention of remaining a permanent resident in Canada. It is extremely important for any permanent resident who may be absent from Canada for more than 183 days in any given twelve (12) month period to obtain a returning resident permit in order not to

endanger their landed immigrant status. Please note that this period does not have to run concurrently with the calendar year.

PROPOSED CHANGES TO THE INDEPENDENT APPLICANT CATEGORY AND THE INVESTOR CATEGORY

The most common way for a person to become a landed immigrant in Canada is still under the Independent Applicant category. Under this category, a person is assessed and given units or points of assessment based on factors which are designed by CIC. At the present time, these factors are education, age, experience in the intended occupation, arranged employment (if any); and language ability in English and French.

In addition, extra points are given to potential applicants who have close relatives in Canada such as children, parents, grandparents, siblings, uncles, aunts, nephews and nieces. To be successful in an application under this category, an applicant must obtain 70 points. Up to 10 points may be given by an Immigration Officer for what is called "Personal Suitability", which is a subjective determination by an Immigration Officer as to how a prospective applicant and/or his/her dependents may adapt and establish themselves in Canada.

Generally speaking, in order to qualify to be assessed as an independent applicant, the applicant's application must be on the General Occupations List ("GOL") which is a list of occupations which are "open" for the purposes of applying for immigration to Canada in the independent category.

Under the current rules, whether an applicant has the proper credentials to qualify under one of those "open" occupations, and how many points should be given for work experience, is now being awarded by using a classification system known as the National Occupation Classification ("NOC"). The introduction of the NOC has already eliminated approximately 1,000 occupations from the GOL, and rendered certain occupations which are still on the NOC virtually impossible to succeed on in light of the low amount of points given for those occupations. In order to be successful under the current rules, an applicant must be able to perform the job duties described in the NOC and possess educational and other requirements for the intended occupation as set out in the NOC, including a number of licencing and other requirements.

The Government is now planning to make changes to the Independent Applicant category. The proposed legislation has a different focus. Its intention is to shift away from the current occupation-based selection model to one which emphasizes skilled workers with sound and transferrable skills. There will be more emphasis on education and experience and more emphasis on a person's overall perceived flexibility, adaptability, motivation and knowledge of Canada - factors which are currently not always taken into account when points for personal suitability are being awarded. The new system may make the process more uncertain and give more discretion to Immigration Officers handling these applications. The new legislation will also place more emphasis on licencing, certification and knowledge of the official languages of Canada. The proposed legislation also intends to change the optimal age of potential immigrants, which is currently between 21 to 44 to 25 to 35.

The current Investor Immigration Program was changed on April 1, 1999. Under the current program, a potential immigrant who has successfully operated, controlled or directed a business and who has a net worth accumulated for his/her own endeavours of a minimum of \$500,000 (Canadian) may be eligible to become a landed immigrant in Canada by virtue of this program. Under the previous regulations, the minimum investments required under this programs were \$250,000 and \$350,000 respectively depending on which province the applicant invested in.

As of April 1, 1999, a new program has been introduced whereby the two-tiered investment (\$250,000 or \$350,000) scheme has been eliminated. As of now, all applicants must invest \$400,000. The net worth requirement of all applicants has been increased to \$800,000. The investment funds are locked for 5 years after which time the investor's \$400,000 is returned. It is important to note that no interest is paid to the investors which in our view renders the entire program less desirable.