



# Blaneys on Immigration Law

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.

## *“Working-Age Dependent Children of Foreign Workers in Ontario and Alberta May Seek Work Permits Until July 12, 2012...”*

### **CITIZENSHIP AND IMMIGRATION CANADA (“CIC”) EXTENDS PILOT PROJECTS FOR WORKING-AGE DEPENDENT CHILDREN OF WORKERS DESTINED TO ONTARIO AND ALBERTA**

**Henry J. Chang**

On June 28, 2010, CIC released Operational Bulletin 123, which extended the *Pilot Project for Working-Age Dependent Children of Workers Destined to Ontario* until July 12, 2012. This pilot program is meant to consider whether or not facilitating the issuance of work permits to working-age dependents of skilled Temporary Foreign Workers (“TFWs”) will make Ontario a more attractive destination for the principal applicants, thereby increasing the effectiveness of the TFW program in attracting international workers with in-demand skills.

This pilot program has been extended from July 1, 2010 to July 30, 2012 inclusive; these dates refer only to the period in which qualifying work permit applications must be received, not to the duration of the work permits. The pilot program will apply only to qualifying foreign nationals destined to work in the Province of Ontario. Dependent children of foreign nationals seeking work permits under the Ontario program must meet all of the following criteria to be eligible:

- (a) They must be eligible to work in the province of Ontario; and
- (b) They must be a dependent child of a foreign national where the principal applicant is entering Canada, is destined to Ontario as a TFW and has a valid, job-specific work permit with a minimum duration of 6 months in an occupation found within Skill Levels 0, A or B of the *National Occupation Classification* (“NOC”) system.

On the same day, CIC also released Operational Bulletin 122, which extended the *Pilot Project for Working-Age Dependent Children of Workers Destined to Alberta* until July 30, 2012. This pilot program is virtually identical to the pilot program in Ontario except that it applies only to qualifying foreign nationals destined to work in the Province of Alberta. Dependent children of foreign nationals seeking work permits under the Alberta program must meet all of the following criteria to be eligible:

- (a) They must be aged 18-22 at date of application and eligible to work in the province of Alberta; and
- (b) They must be a dependent child of a foreign national where the principal applicant is entering Canada, destined to Alberta as a

*“A maximum of 20,000 Federal Skilled Worker applications that are filed without an offer of arranged employment will now be considered for processing each year. Within the cap, a maximum of 1,000 Federal Skilled Worker applications per NOC code will be considered for processing each year...”*



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)

TFW and has a valid, job-specific work permit with a minimum duration of 6 months in an occupation found within skill levels 0, A or B of the NOC.

The LMO exemption code is T13 in conjunction with Subsection 204(c) of the *Immigration and Refugee Protection Regulations* (“IRPR”). The duration of the work permit issued to the accompanying dependent cannot exceed the expiry date of the work permit of the principal applicant. ■

### **CIC EXTENDS ALBERTA PILOT PROJECT FOR SPOUSES AND COMMON-LAW PARTNERS OF LONG-HAUL TRUCK DRIVERS**

**Henry J. Chang**

On June 28, 2010, CIC released Operational Bulletin 146, which extended the Alberta Pilot Project for Spouses and Common-Law Partners of Long-Haul Truck Drivers until July 30, 2012. This pilot program is extended from August 17th, 2010 to July 30, 2012 inclusive; these dates refer only to the period in which qualifying work permits can be issued, not to the duration of the work permits. The pilot program will apply only to qualifying foreign nationals destined to work in the Province of Alberta.

Applicants for the open work permit must meet all of the following criteria to be eligible:

(a) They must be the spouse or common-law partner of the principal applicant; and

(b) The principal applicant must hold a work permit authorizing them to work in Alberta as a truck driver (NOC 7411), for which he/she possesses a letter of offer confirming their employment as a long-haul truck driver.

The LMO exemption code is T13 in conjunction with R204(c). The duration of the work permit issued to the spouse/common-law partner cannot exceed the expiry date of the work permit of the principal applicant. ■

### **MINISTERIAL INSTRUCTIONS ISSUED BY CIC RESULT IN SIGNIFICANT CHANGES**

**Henry J. Chang**

On June 26, 2010, CIC published Ministerial Instructions and proposed regulations that significantly alter the Federal Skilled Worker Program, Federal Immigrant Investor Program and Canadian Experience Class. An overview of the resulting changes, which also became effective on June 26, 2010, appears below.

#### **Changes to the Federal Skilled Worker Program**

##### **Annual Cap Imposed**

According to the instructions, a maximum of 20,000 Federal Skilled Worker applications that were filed without an offer of arranged employment will now be considered for processing each year. Within the cap, a maximum of 1,000 Federal Skilled Worker applications per NOC code will be considered for processing each year. The imposition of these caps will severely limit the ability of skilled workers to apply for

*“The previous Ministerial Instructions also permitted foreign nationals, who had been residing legally in Canada for at least one year as temporary foreign workers or international students, to apply under the Federal Skilled Worker program. This provision has now been eliminated...”*

Canadian permanent residence without a Canadian employer.

#### **Revised Restrictions on Who May Apply**

On or after June 26, 2010, only the following applications will be accepted under the Federal Skilled Worker program:

- (a) Applications submitted with an Arranged Employment Offer consistent with the requirements of R82(2); or
- (b) Applications from skilled workers with evidence of experience in the last 10 years under one or more of the following NOC codes:
  - 0631 Restaurant and food service managers
  - 0811 Primary production managers (except agriculture)
  - 1122 Professional occupations in business services to management
  - 1233 Insurance adjusters and claims examiners
  - 2121 Biologists and related scientists
  - 2151 Architects
  - 3111 Specialist physicians
  - 3112 General practitioners and family physicians
  - 3113 Dentists
  - 3131 Pharmacists
  - 3142 Physiotherapists
  - 3152 Registered nurses
  - 3215 Medical radiation technologists
  - 3222 Dental hygienists and dental therapists
  - 3233 Licensed practical nurses
  - 4151 Psychologists
  - 4152 Social workers
  - 6241 Chefs
  - 6242 Cooks
  - 7215 Contractors and supervisors, carpentry trades

- 7216 Contractors and supervisors, mechanic trades
- 7241 Electricians (except industrial and power system)
- 7242 Industrial electricians
- 7251 Plumbers
- 7265 Welders and related machine operators
- 7312 Heavy-duty equipment mechanics
- 7371 Crane operators
- 7372 Drillers and blasters — surface mining, quarrying and construction
- 8222 Supervisors, oil and gas drilling and service

Under the previous Ministerial Instructions, there were 38 occupations. As of June 26, 2010, there are only 29 occupations.

The previous Ministerial Instructions also permitted foreign nationals, who had been residing legally in Canada for at least one year as temporary foreign workers or international students, to apply under the Federal Skilled Worker program. This provision has now been eliminated.

#### **Language Proficiency Assessment Required**

According to the instructions, all Federal Skilled Worker applications received by the Central Intake Office (“CIO”) in Sydney, Nova Scotia, on or after June 26, 2010, must be accompanied by the results of the principal applicant’s *International English Language Testing System* (“IELTS”) or *Test d’Evaluation du Français* (“TEF”) language proficiency assessment. As of June 26, any application received by the CIO without language test results will be rejected as incomplete.

Prior to June 26, 2010, foreign nationals whose native language was English or French were not required to take a language test; they could

*“Under proposed regulations, the investment required under the Immigrant Investor Program will increase from \$400,000 CAD to \$800,000 CAD and the personal net worth required to qualify will increase from \$800,000 CAD to \$1.6 Million CAD...”*

instead provide alternative evidence of their language proficiency. However, the instructions no longer recognize that exemption.

The authority to issue Ministerial Instructions appears in Subsection 87.3(3) of the *Immigration and Refugee Protection Act* (“IRPA”). However, A87.3(3) does not authorize Ministerial Instructions to override regulations, and R79(1)(b) clearly recognizes the right of foreign nationals to provide alternative evidence of their proficiency in English or French. As a result, the requirement that all applicants be accompanied by test results would appear to be *ultra vires*.

Notwithstanding the potentially illegality of this requirement, until the issue is resolved (perhaps through litigation), all Federal Skilled Worker applicants (including native English and French speakers) should submit test results with their applications or they will risk having their applications rejected as incomplete.

#### **No H&C requests to overcome requirement of Ministerial Instructions**

The instructions make clear that any requests made on the basis of humanitarian and compassionate grounds that accompany a Federal Skilled Worker application that are not identified under the instructions will not be processed.

#### **Changes to the Canadian Experience Class**

The instructions also impose a mandatory language test requirement on Canadian Experience Class applications received by CIC on or after June 26, 2010. For the same reasons mentioned above, this mandatory language test requirement is likely *ultra vires*. Nevertheless, for the time

being, Canadian Experience Class applications (including those filed by native English or French speakers) should be submitted with language test results.

#### **Changes to the Immigrant Investor Program**

On June 26, 2010, CIC published proposed regulations, which will increase the personal net worth and investment amounts utilized by the Canadian Federal Immigrant Investor Program. Under the proposed regulations, the investment required under the Immigrant Investor Program will increase from \$400,000 CAD to \$800,000 CAD. In addition, the personal net worth required to qualify will increase from \$800,000 CAD to \$1.6 Million CAD. Once the final regulations have been published, these higher investment and personal net worth amounts will become effective.

CIC also stated in the instructions that it would create an “administrative pause” (i.e., a moratorium on new Immigrant Investor Program applications) from June 26, 2010, until the date that the final regulations become effective. No Immigrant Investor Program applications will be accepted unless they were postmarked or received by CIC before June 26, 2010, and no subsequent applications will be accepted until the final regulations become effective. The stated objective of this “administrative pause” is to mitigate the growing surge in such applications under the current investment and personal net worth levels. ■

*“International students who have graduated from a publicly-funded Ontario university with a Masters degree can now apply for permanent residence without a job offer under the Pilot International Masters Graduate Stream...”*

### **CENTRAL INTAKE OFFICE REVISES FEDERAL SKILLED WORKER DOCUMENT CHECKLIST**

**Henry J. Chang**

As reported above, on June 26, 2010, CIC published Ministerial Instructions, which affected the Federal Skilled Worker Class. These Ministerial Instructions imposed a mandatory language proficiency assessment on all Federal Skilled Worker cases, even those submitted by native English or French speakers and even where they did not require language points to qualify.

Following the issuance of these Ministerial Instructions, CIC also revised its IMM 5612 Document Checklist, which is used for the initial filing of Federal Skilled Worker applications with the CIO. The language proficiency assessment was an expected addition to IMM 5612. However, what was not expected is the requirement that applicants also submit all documents listed on the specific visa office document checklist applicable to the consular post where the application will be processed.

Prior to this change, the CIO did not require supporting documentation with the initial filing. Instead, applicants submitted a simplified application consisting primarily of relevant forms and the filing fee, without any supporting documentation. Once the CIO had screened the application and forwarded the case to the consular post, the applicant would be expected to provide any relevant supporting documentation to the post directly.

Based on the current IMM 5612, the applicant must now submit a complete application,

including all supporting documentation at the time of the initial filing with the CIO. This can cause considerable delays since documents such as police clearance certificates can take months to obtain from certain countries.

Another more serious question is whether the CIO will forward the supporting documents to the consular post after it has done the initial screening. Prior to this change, the CIO did not forward the application forms to the consular post. It simply entered information contained in the forms into CIC's database. If all supporting documentation must now be filed initially with the CIO, it is uncertain whether these documents will be forwarded to the consular post once CIO has screened the application. ■

### **OPPORTUNITIES ONTARIO ANNOUNCES PILOT PROGRAM FOR INTERNATIONAL MASTERS GRADUATES**

**Henry J. Chang**

On June 14, 2010, Opportunities Ontario (Ontario's Provincial Nominee Program) announced a new pilot program for Ontario graduates holding Masters degrees. International students who have graduated from a publicly funded Ontario university with a Masters degree can now apply for permanent residence without a job offer under the *Pilot International Masters Graduate Stream*.

In order to apply to Opportunities Ontario as an international Masters graduate in Ontario, students must:

*“...effective October 1, 2010, employers who wish to hire temporary foreign workers previously eligible under the IT Worker Program will be required to apply for an individual Labour Market Opinion.”*

- (a) Intend to live and work in Ontario;
- (b) Have graduated from an existing Masters program at an eligible publicly funded university in Ontario;
- (c) Have completed a minimum of one academic year degree program, while studying on a full-time basis;
- (d) Apply within two years of the date on which their Masters degree was granted, or in the alternative, during the last semester of completing their degree;
- (e) Currently be residing in Ontario;
- (f) Have legal status in Canada (i.e. study permit, work permit, temporary resident visa)
- (g) Demonstrate high official language proficiency (For English language proficiency – IELTS – General test with a minimum score of 7 or higher) (For French language proficiency – TEF – with a minimum score of 5 or higher);
- (h) Demonstrate a minimum level of savings/income to support themselves and their dependants; and
- (i) Demonstrate at least one year of residence in Ontario in the past two years.

International students subsidized through the Canadian International Development Agency grants or home country scholarship with return obligations will not be eligible for Opportunities Ontario unless such obligations have been fulfilled. ■

### **HRSDC ANNOUNCES TERMINATION OF THE SIMPLIFIED ENTRY PROCESS FOR INFORMATION TECHNOLOGY SPECIALISTS**

**Henry J. Chang**

On May 20, 2010, Human Resources Skills Development Canada (“HRSDC”) announced that on September 30, 2010, the Simplified Entry Process for Information Technology Specialists (the “IT Worker Program”) would come to an end, except for employers seeking to hire foreign workers for positions in Quebec, where the program will remain in place for a limited time after September 30, 2010.

In response to a perceived shortage of IT workers in Canada, HRSDC, CIC, Industry Canada, and the Software Human Resources Council initially established the IT Worker Program to exempt certain IT workers from the need to obtain an individual Labour Market Opinion (“LMO”). Instead, these IT workers could apply directly for a work permit through CIC or the Canadian Border Services Agency (“CBSA”), based on this program. The IT Worker Program included the following seven occupations:

- (a) Embedded Systems Software Designers;
- (b) Software Products Developers;
- (c) MIS Software Designers;
- (d) Multimedia Software Developers;
- (e) Senior Animation Effects Editors;
- (f) Software Developer - Services; and
- (g) Telecommunications Software Designers.

The IT Worker Program became effective on May 5, 1997, and was extended several times.

*“To succeed on an (Labour Market Opinion) application, the employer must first advertise the position within Canada to see if it can find qualified Canadians or Permanent Residents for the job.”*



Suzanne practices within the firm's Immigration Law group. She is a member of the Executive of the Citizenship and Immigration Canada section of the Ontario Bar Association and she is the Chair of the Port of Entry to Canada Sub-committee of the Canadian Bar Association (Ontario section). Suzanne is also a member of the HRSDC (Service Canada) Sub-committee of the Ontario Bar Association.

Suzanne may be reached directly at 416.597.3903 or [sbailey@blaney.com](mailto:sbailey@blaney.com)

However, effective October 1, 2010, employers who wish to hire temporary foreign workers previously eligible under the IT Worker Program will be required to apply for an individual LMO. Work permit applications received by CIC or by CBSA on or after this date will require an approved LMO for the seven specific IT occupations that were previously included under the pilot program.

On August 5, 2010, CIC issued Operational Bulletin 225, which provided modified processing instructions for IT Worker Program cases filed prior to October 1, 2010. According to the bulletin, requests for an extension of a work permit or a new work permit application filed prior to October 1, 2010, if approved, will only be granted for a maximum duration of one year from the date of issuance of the work permit. ■

## CHANGES TO LABOUR MARKET OPINION (LMO) APPLICATIONS

### Suzanne Bailey

Traditionally, foreign workers strive to apply for Work Permits under international treaties, such as NAFTA, intra-company transfers (pursuant to the IRPA Regulations), working holiday programs, etc. When these easier and more facilitative methods to obtain a Work Permit are not available, the only means usually left for a foreign worker to obtain a Work Permit is to find a prospective employer in Canada, willing to file a Labour Market Opinion (“LMO application”) on his behalf to Service Canada. The LMO application is sent by the employer to the Service Canada office in the province where the foreign national seeks to work.

To succeed on an LMO application, the employer must first advertise the position within Canada to see if it can find qualified Canadians or Permanent Residents for the job. Certain categories are exempt from the general advertising rule, but most positions require it. Overall, Service Canada has a “Canadians first” policy and only if the employer can satisfy Service Canada that it has met the advertising requirements will the LMO application succeed.

If the LMO application succeeds, the employer is given a positive Confirmation to hire the foreign national. Thereafter, the foreign national applies for a Work Permit at a port of entry (airport/border crossing) or through a Canadian Consulate/Canadian High Commission abroad.

Recently, in May 2010, Service Canada/HRSDC revised the minimum advertising requirements for LMO applications. The most significant change is the more onerous advertising requirements for Skill Level “B” occupations under the NOC (National Occupational Classification). Previously these NOC Skill Level “B” occupations (such as Electrical Trades, Automotive Service Technicians, Medical Technologists, Sales and Service Supervisors, etc.) required the employer to advertise only on Canada’s National Job Bank for 14 consecutive days (which advertising is free). However, in May 2010, Service Canada/HRSDC imposed an additional requirement for a second set of advertising for a minimum of 14 days, “consistent with the practice within the occupation”. Examples of such additional advertising include advertising on “recognized internet job sites, journals, newsletters or national newspapers or by consulting unions or professional associations”.

*“Many employers will not have an issue with the new contents requirements of the advertisements. However, some employers will be resistant to publishing salaries for confidentiality reasons...”*

Of significance is that this second advertising requirement for NOC Level “B” occupations can result in substantial expense to the employer, which they did not previously incur. The net effect of this change is that it is now harder for Canadian employers to hire foreign nationals in occupations at NOC Skill Level “B”, despite there being a shortage of Canadian workers in these occupations.

While the advertising requirements for NOC Skill Level “B” positions have changed, the minimum advertising requirements for NOC Skill Level “O” and “A” occupations remain essentially the same as before, i.e. the employer can advertise on the National Job Bank for a minimum of 14 days or conduct other recruitment activities consistent with the practice of that occupation (internet job sites, journals, newsletters or national newspapers, etc.).

For NOC Skill Level “B”, “C” and “D” occupations, Service Canada has now provided guidelines on the contents of the advertisement. It must now include:

- the company operating name;
- job duties (for each position, if advertising for more than one vacancy);
- wage range (i.e. an accurate range of wages being offered to Canadians and permanent residents). The wage range must always include the prevailing wage for the position;
- the location of work (local area, city, or town); and
- the nature of the position (i.e. project based, or permanent position).

Many employers will not have an issue with the new contents requirements of the advertisements.

However, some employers will be resistant to publishing salaries for confidentiality reasons, not wishing their existing employees to know the salary of other workers and also not wishing to disclose their salaries to competitors. Currently, Service Canada has not provided an option for employers not wishing to publish salaries.

In addition to the new guidelines for advertising, Service Canada/HRSDC has published more detailed information regarding advertising criteria specific to the province of Quebec. Foreign workers destined to Quebec should review those specific requirements prior to submitting an LMO application in that province.

As noted above, there are certain categories where the advertising requirements for LMO applications are either waived or varied. There is a finite number of categories, specifically 15 cases. If none of these apply, then the general rule of advertising governs. The 15 advertising variations are restricted to:

- Academics;
- Camp Counsellors;
- Collective Bargaining Agreement that Stipulates Internal Recruitment;
- Employer Associations;
- Entertainment Sector;
- Exotic Dancers;
- Foreign Government;
- IT Specialists;
- International Graduates;
- Live-in Caregivers;
- Live-in Caregivers in Emergency Situations;
- Owners/Operators;
- Seasonal Agricultural Workers;



*“On April 21, 2010, Opportunities Ontario announced that International PhD graduates who have graduated from a publicly funded Ontario university will now be permitted to apply without a job offer...”*

- Specialized Service Technicians/Specialized Service Providers; and
- Warranty Work.

Of the above-noted categories, the following are new as of May 2010: (1) Collective Bargaining Agreement that Stipulates Internal Recruitment; (2) Employer Associations; (3) Live-in Caregivers in Emergency Situations; and (4) Specialized Service Technicians/Specialized Service Providers.

Employers and foreign workers should review whether these advertising variations apply to their specific case prior to the employer embarking on advertising, which as noted above, can be quite expensive. ■

### **OPPORTUNITIES ONTARIO ANNOUNCES INTERNATIONAL PhD GRADUATE STREAM**

**Henry J. Chang**

On April 21, 2010, Opportunities Ontario announced that International PhD graduates who have graduated from a publicly funded Ontario university will now be permitted to apply without a job offer. Opportunities Ontario has created the *International PhD Graduate Stream* for this purpose.

In order to apply to Opportunities Ontario as an international PhD graduate in Ontario, students must:

- (a) Have graduated from an existing PhD program at an eligible publicly funded university in Ontario or have successfully completed all

degree requirements for the program (i.e. completion of course work and successfully defended their thesis and are awaiting the granting of their degree);

- (b) Have completed at least two years of their PhD studies at an eligible publicly funded university in Ontario;

- (c) Apply within two years of the date on which their PhD degree was granted; and

- (d) Have legal status, if the international PhD graduate applicant is in Canada.

International students subsidized through the Canadian International Development Agency grants or home country scholarship with return obligations will not be eligible for Opportunities Ontario unless such obligations have been fulfilled.

Ontario international PhD students may apply for the program from within Canada or from overseas. ■

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*Blaneys on Immigration Law* 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 Chris Jones at 416 593.7221 ext. 3030 or by email to [cjones@blaney.com](mailto:cjones@blaney.com). Legal questions should be addressed to the specified author.

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**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](http://www.blaney.com)