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PUBLICATION

CIC Issues Ministerial Instructions Relating to Express Entry

Date: December 12, 2014

Original Newsletter(s) this article was published in: Blaneys on Immigration: December 2014

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").

In summary, Express Entry will apply to all FSW, CEC, and FST applications filed on or after January 1, 2015. However, it 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 is particularly troubling because appears to preclude the issuance of an ITA to certain foreign workers who would not otherwise require an LMIA, unless their Canadian employer obtains one on their behalf. For example, a Chief Executive Officer of a multinational corporation who obtains a work permit without an LMIA, as a NAFTA intra-company transferee, would normally be deemed to have arranged employment for the purposes of the FSW class without the need to obtain an actual LMIA. However, under Express Entry that same CEO would be prevented from receiving an ITA while a lower-level employee with an approved LMIA would be entitled to receive an ITA. It is hoped that CIC corrects this apparent error before Express Entry commences on January 1, 2015.

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.

Maximum Points Allocations

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.

Core Human Capital Factors

AGE

For a candidate who has no accompanying spouse or common-law partner, points for age are assigned as follows:

a. 0 points, if the candidate is 17 years of age or less;

b. 99 points, if the candidate is 18 years of age;

c. 105 points, if the candidate is 19 years of age;

d. 110 points, if the candidate is 20 to 29 years of age;

e. 105 points, if the candidate is 30 years of age;

f. 99 points, if the candidate is 31 years of age;

g. 94 points, if the candidate is 32 years of age;

h. 88 points, if the candidate is 33 years of age;

i. 83 points, if the candidate is 34 years of age;

j. 77 points, if the candidate is 35 years of age;

k. 72 points, if the candidate is 36 years of age;

l. 66 points, if the candidate is 37 years of age;

m. 61 points, if the candidate is 38 years of age;

n. 55 points, if the candidate is 39 years of age;

o. 50 points, if the candidate is 40 years of age;

p. 39 points, if the candidate is 41 years of age;

q. 28 points, if the candidate is 42 years of age;

r. 17 points, if the candidate is 43 years of age;

s. 6 points, if the candidate is 44 years of age; and

t. 0 points, if the candidate is 45 years of age or more.

For a candidate who has an accompanying spouse or common-law partner, points for age are assigned as follows:

a. 0 points, if the candidate is 17 years of age or less;

b. 90 points, if the candidate is 18 years of age;

c. 95 points, if the candidate is 19 years of age;

d. 100 points, if the candidate is 20 to 29 years of age;

e. 95 points, if the candidate is 30 years of age;

f. 90 points, if the candidate is 31 years of age;

g. 85 points, if the candidate is 32 years of age;

h. 80 points, if the candidate is 33 years of age;

i. 75 points, if the candidate is 34 years of age;

j. 70 points, if the candidate is 35 years of age;

k. 65 points, if the candidate is 36 years of age;

l. 60 points, if the candidate is 37 years of age;

m. 55 points, if the candidate is 38 years of age;

n. 50 points, if the candidate is 39 years of age;

o. 45 points, if the candidate is 40 years of age;

p. 35 points, if the candidate is 41 years of age;

q. 25 points, if the candidate is 42 years of age;

r. 15 points, if the candidate is 43 years of age;

s. 5 points, if the candidate is 44 years of age; and

t. 0 points, if the candidate is 45 years of age or more.

LEVEL OF EDUCATION

For a candidate who has no accompanying spouse or common-law partner, points for level of education are assigned as follows:

a. 0 points, if the candidate has less than a secondary school credential,

b. 30 points, if the candidate has a secondary school credential,

c. 90 points, if the candidate has a one-year post-secondary program credential,

d. 98 points, if the candidate has a two-year post-secondary program credential,

e. 120 points, if the candidate has a post-secondary program credential of three years or more,

f. 128 points, if the candidate has two or more post-secondary program credentials and at least one of them was issued at the completion of a post-secondary program of three years or more,

g. 135 points, if the candidate has a university-level credential at the master's level or at the level of an entry-to-practice professional degree for an occupation listed in the *National Occupational Classification* ("NOC") matrix at Skill level A for which licensing by a provincial regulatory body is required, and

h. 150 points, if the candidate has a university-level credential at the doctoral level.

For a candidate who has an accompanying spouse or common-law partner, points for level of education are assigned as follows:

a. 0 points, if the candidate has less than a secondary school credential;

b. 28 points, if the candidate has a secondary school credential;

c. 84 points, if the candidate has a one-year post-secondary program credential;

d. 91 points, if the candidate has a two-year post-secondary program credential;

e. 112 points, if the candidate has a post-secondary program credential of three years or more;

f. 119 points, if the candidate has two or more post-secondary program credentials and at least one of them was issued at the completion of a post-secondary program of three years or more;

g. 126 points, if the candidate has a university-level credential at the master's level or an entry-to-practice professional degree for an occupation listed in the NOC matrix at Skill level A for which licensing by a provincial regulatory body is required; and

h. 140 points, if the candidate has a university-level credential at the doctoral level.

Education points will be assigned based on the highest level of education obtained. However, in order for a candidate to be assigned points for education, the following must apply:

a. Their educational credentials must be Canadian educational credentials; or

b. They must have a valid educational credential equivalency assessment issued by a designated credential evaluation organization or institution.

OFFICIAL LANGUAGE PROFICIENCY

OVERVIEW

Points will be assigned to candidates for proficiency in their first official language and for proficiency in their second official language. As a result, they must indicate which of Canada's two official languages (English or French) is their primary language and which is their secondary language. In order to receive points for language, candidates must also have their proficiency assessed by a designated language testing organization or institution.

FIRST OFFICIAL LANGUAGE

Points will be assigned for each language skill area (reading, writing, listening, and speaking) of the candidate's first official language. The calculation of points will be based on their benchmark level, as assessed under the Canadian Language Benchmarks or the *Niveaux de compétence linguistique canadiens*.

For a candidate who has no accompanying spouse or common-law partner, points will be assigned for each language skill area as follows:

a. 0 points for being assessed at less than level 4;

b. 6 points for being assessed at level 4 or 5;

c. 9 points for being assessed at level 6;

d. 17 points for being assessed at level 7;

e. 23 points for being assessed at level 8;

f. 31 points for being assessed at level 9; and

g. 34 points for being assessed at level 10 or higher.

The maximum number of points that may be assigned for all four language skill areas, taken together, in the candidate's first official language is 136 points.

For a candidate who has an accompanying spouse or common-law partner, points will be assigned for each language skill area as follows:

a. 0 points for being assessed at less than level 4;

b. 6 points for being assessed at level 4 or 5;

c. 8 points for being assessed at level 6;

d. 16 points for being assessed at level 7;

e. 22 points for being assessed at level 8;

f. 29 points for being assessed at level 9; and

g. 32 points for being assessed at level 10 or higher.

The maximum number of points that may be assigned for all four language skill areas, taken together, in the candidate's first official language is 128 points.

SECOND OFFICIAL LANGUAGE

Points will also be assigned for each language skill area (reading, writing, listening, and speaking) of the candidate's second official language. The calculation of points will again be based on their benchmark level, as assessed under the Canadian Language Benchmarks or the *Niveaux de compétence linguistique canadiens*.

Points will be assigned for each language skill area as follows:

a. 0 points for being assessed at level 4 or less;

b. 1 point for being assessed at level 5 or 6;

c. 3 points for being assessed at level 7 or 8; and

d. 6 points for being assessed at level 9 or higher.

For a candidate who has no accompanying spouse or common-law partner, the maximum number of points that may be assigned for all of the language skill areas, taken together, in the second official language is 24 points. For a candidate who has an accompanying spouse or common-law partner, the maximum number of points that may be assigned for all of the language skill areas, taken together, in the second official language is 22 points.

CANADIAN WORK EXPERIENCE

Points will be assigned to candidates for Canadian work experience, which is defined as work experience that:

a. Is acquired by a candidate in Canada in one or more occupations listed in Skill Type 0 Management Occupations or Skill Level A or B of the *National Occupational Classification* matrix;

b. Consists of continuous full-time work experience or the full-time equivalent for part-time work experience; and

c. Is acquired within the 10-year period preceding the day on which points are assigned to the candidate.

Full-time employment means employment of at least 30 hours per week. A period of work experience that exceeds full-time work in one occupation, or simultaneous periods of work experience in more than one full-time occupation, will be evaluated as a single period of full-time work experience in a single occupation.

Any period of employment during which the candidate was engaged in full-time study, engaged in self-employment, or engaged in unauthorized work may not be counted when calculating the period of work experience. The candidate must also have had temporary resident status during their period of work experience and any period of full-time study or training.

The candidate must specify in their Expression of Interest the four-digit code in the NOC that corresponds to each of the occupations they have engaged in while accumulating their Canadian work experience. They must also have performed the actions described in the lead statement for the occupation as set out in the occupational descriptions of the NOC, as well as a substantial number of the main duties described therein (including all essential duties).

For a candidate who has no accompanying spouse or common-law partner, points will be assigned for Canadian work experience as follows:

a. 0 points, for no Canadian work experience or less than one year of such experience;

b. 40 points, for one year of Canadian work experience;

c. 53 points, for two years of Canadian work experience;

d. 64 points, for three years of Canadian work experience;

e. 72 points, for four years of Canadian work experience; and

f. 80 points, for five or more years of Canadian work experience.

For a candidate who has an accompanying spouse or common-law partner, points will be assigned for Canadian work experience as follows:

a. 0 points, for no Canadian work experience or less than one year of such experience;

b. 35 points, for one year of Canadian work experience;

c. 46 points, for two years of Canadian work experience;

d. 56 points for three years of Canadian work experience;

e. 63 points, for four years of Canadian work experience; and

f. 70 points, for five or more years of Canadian work experience.

Accompanying Spouse or Common-Law Partner

Points will also be assigned based on accompanying spouse or common-law partner factors, which consist of the following: (a) level of education, (b) official language proficiency; and (c) Canadian work experience. Each of these factors is described below.

LEVEL OF EDUCATION

In order for a candidate to be assigned points for education of the accompanying spouse or common-law partner (if applicable), the following must apply:

a. Their educational credentials must be Canadian educational credentials; or

b. They must have a valid educational credential equivalency assessment issued by a designated credential evaluation organization or institution.

Points will be assigned for the level of education of the accompanying spouse or common law partner as follows:

a. 0 points, if the accompanying spouse or common-law partner has less than a secondary school credential;

b. 2 points, if the accompanying spouse or common-law partner has a secondary school credential;

c. 6 points, if the accompanying spouse or common-law partner has a one-year post-secondary program credential;

d. 7 points, if the accompanying spouse or common-law partner has a two-year post-secondary program credential;

e. 8 points, if the accompanying spouse or common-law partner has a post-secondary program credential of three years or more;

f. 9 points, if the accompanying spouse or common-law partner has two or more post-secondary program credentials and at least one of them was issued at the completion of a post-secondary program of three years or more;

g. 10 points, if the accompanying spouse or common-law partner has a university-level credential at the master's level or at the level of an entry-to-practice professional degree for an occupation listed in the NOC matrix at Skill level A for which licensing by a provincial regulatory body is required; and

h. 10 points, if the accompanying spouse or common-law partner has a university-level credential at the doctoral level.

OFFICIAL LANGUAGE PROFICIENCY

Points will be assigned for each language skill area (reading, writing, listening, and speaking) for the first official language (but not the second official language) of the accompanying spouse or common law partner. The candidate must specify which official language is to be considered the first official language of the spouse or common-law partner.

The language proficiency of the accompanying spouse or common-law partner must be assessed by a designed organization or institution. Points assigned for proficiency in English will be based on the results assessed according to the benchmarks set out in Canadian Language Benchmarks and the points assigned for proficiency in the French language are to be based on the results assessed according to the benchmarks set out in the *Niveaux de compétence linguistique canadiens*.

Points will be assigned to the candidate for the proficiency of their accompanying spouse or common-law partner, in each language skill area (reading, writing, listening and speaking), as follows:

a. 0 points for being assessed at level 4 or less;

b. 1 point for being assessed at level 5 or 6;

c. 3 points for being assessed at level 7 or 8; and

d. 5 points for being assessed at level 9 or higher.

The maximum number of points that may be assigned for all of the language skill areas, taken together, is 20 points.

CANADIAN WORK EXPERIENCE

Points will be assigned to the candidate, based on the Canadian work experience of the accompanying spouse or common-law partner, as follows:

a. 0 points, if the accompanying spouse or common-law partner has no Canadian work experience or less than one year of such experience;

b. 5 points, if the accompanying spouse or common-law partner has one year of Canadian work experience;

c. 7 points, if the accompanying spouse or common-law partner has two years of Canadian work experience;

d. 8 points, if the accompanying spouse or common-law partner has three years of Canadian work experience;

e. 9 points, if the accompanying spouse or common-law partner has four years of Canadian work experience; and

f. 10 points, if the accompanying spouse or common-law partner has five or more years of Canadian work experience.

In order for the candidate to be assigned points for the Canadian work experience of their accompanying spouse or common-law partner, the Expression of Interest must include the four-digit code in the NOC that corresponds to each of the occupations that the accompanying spouse or common-law partner has engaged in while accumulating their Canadian work experience. The spouse or common-law partner also must have performed the actions described in the lead statement for the occupation as set out in the occupational descriptions of the NOC, as well as a substantial number of the main duties (including all essential duties).

Skill Transferability Factors

COMBINATION OF LEVEL OF EDUCATION AND OFFICIAL LANGUAGE PROFICIENCY

Points are to be assigned for a *combination* of a candidate's level of education and language proficiency (in their first official language) as follows:

a. 0 points, if the candidate has a secondary school credential, regardless of their proficiency in their first official language;

b. 13 points, if the candidate has a post-secondary program credential of one or more years and is assessed overall in their first official language at level 7 on all language skill areas, with one or more areas assessed at less than level 9;

c. 25 points, if the candidate has a post-secondary program credential of one or more years and is assessed in their first official language at level 9 or higher on all language skill areas;

d. 25 points, if the candidate has two or more post-secondary program credentials, one of which was issued on completion of a post-secondary program of three years or more, and is assessed overall in their first official language at level 7 on all language skill areas, with one or more areas assessed at less than level 9; and

e. 50 points, if the candidate has two or more post-secondary program credentials, one of which was issued on completion of a post-secondary program of three years or more, and is assessed in their first official language at level 9 or higher on all language skill areas.

Points are to be assigned based on the highest level of post-secondary education obtained.

COMBINATION OF LEVEL OF EDUCATION AND CANADIAN WORK EXPERIENCE

Points are to be assigned for a *combination* of a candidate's level of education and Canadian work experience as follows:

a. 0 points, if the candidate has a secondary school credential, regardless of their Canadian work experience;

b. 13 points, if the candidate has a post-secondary program credential of one year or more and one year of Canadian work experience;

c. 25 points, if the candidate has a post-secondary program credential of one year or more and two or more years of Canadian work experience;

d. 25 points, if the candidate has two or more post-secondary program credentials, one of which was issued on completion of a post-secondary program of three years or more, and one year of Canadian work experience; and

e. 50 points, if the candidate has two or more post-secondary program credentials, one of which was issued on completion of a post-secondary program of three years or more, and two or more years of Canadian work experience.

The above points are to be assigned based on the highest level of post-secondary education obtained.

The points assigned for: (a) education plus language, and (b) education plus Canadian work experience may be combined. However, the total number of points earned for these two factors combined may not exceed 50 points.

COMBINATION OF FOREIGN WORK EXPERIENCE AND OFFICIAL LANGUAGE PROFICIENCY

Points are to be assigned for a *combination* of a candidate's foreign work experience and language proficiency (in their first official language) as follows:

a. 0 points, if the candidate has no foreign work experience, regardless of their proficiency in their first official language;

b. 13 points, if the candidate has one or two years of foreign work