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PUBLICATION

New Express Entry Rules in Effect as of November 19, 2016

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Introduction

On January 1, 2015, Immigration, Refugees, and Citizenship Canada, formerly known as Citizenship and Immigration Canada, implemented its Express Entry System. Express Entry applies to the following permanent resident categories:

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

Under Express Entry, applicants who wish to be considered under any of the above permanent resident categories must now submit an online profile, to indicate their interest in immigrating to Canada. Those 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) are accepted into a special pool of candidates (the "Express Entry Pool").

Of course, acceptance into the Express Entry Pool does not guarantee that a particular candidate will receive an Invitation to Apply ("ITA") for permanent residence. Instead, candidates in the Express Entry Pool are ranked against each other using a point-based system called the Comprehensive Ranking System ("CRS"). The candidates with the highest CRS score are periodically selected from the Express Entry Pool and sent an ITA.

On October 21, 2016, the Minister of Citizenship and Immigration issued revised Ministerial Instructions (the "2016 Amendments"), which made significant changes to the existing Express Entry System. These changes came into effect on November 19, 2016.

Changes to Qualifying Offers of Arranged Employment

Under the prior Express Entry System, a foreign national with a "qualifying offer of arranged employment" received 600 CRS points, more than enough to guarantee that they would

immediately receive an ITA. However, only a permanent, full-time offer of employment that was based on a Labour Market Impact Assessment ("LMIA") issued by Employment and Social Development Canada would qualify.

Under the 2016 Amendments, certain LMIA-exempt work permits will also count as a qualifying offer of arranged employment. However, the permanent offer of employment must be made by the employer listed on the work permit, the foreign national must be working for that employer, and the foreign worker must have accumulated at least one continuous year of full-time work experience (or the equivalent in part-time work) with that employer.

To be eligible, the LMIA-exempt work permit must have been issued in the circumstances described in Subsection 204(a) [pursuant to an international agreement between Canada and one or more countries, such as the *North American Free Trade Agreement*], Subsection 204(c) [an agreement entered into by the Minister with a province or group of provinces (i.e. provincial nominees)], or Section 205 [i.e. significant benefit to Canada, intra-company transferees, reciprocal employment, etc.] of the *Immigration and Refugee Protection Regulations* ("IRPR").

Unfortunately, the number of CRS points that will be awarded for having a qualifying offer of arranged employment has also dropped. If the offer of employment is for an occupation contained in Major Group 00 [Senior Management Occupations] of the *National Occupational Classification* ("NOC"), 200 CRS points are awarded. In all other occupations (NOC 0 A, or B), 50 CRS points are awarded.

This will still benefit holders of the above LMIA-exempt work permits, who would not have previously received any CRS points for having a qualifying offer of arranged employment. However, the drop in CRS points will severely disadvantage foreign nationals holding LMIA-based work permits, who would have received 600 CRS points under the previous Express Entry System; most will now receive only 50 CRS points.

CRS Points for Canadian Educational Credentials

In response to allegations that the previous Express Entry system disadvantaged international students graduating from Canadian post-secondary educational institutions, the Minister of Citizenship and Immigration had expressed a willingness to make it easier for them. The 2016 Amendments attempt to address this problem by awarding additional CRS points for Canadian educational credentials.

The previous Express Entry System already offered CRS points for level of education but it treated Canadian and foreign educational credentials the same. However, in order to obtain CRS points for a foreign educational credential, the foreign national would require an Educational Credential Assessment, confirming that the foreign credential was equivalent to a Canadian credential.

Under the 2016 Amendments, foreign nationals with Canadian educational credentials will now receive additional CRS points as follows:

- 15 points for an eligible credential from a one-year or two-year post-secondary program in Canada; and
- 30 points, for:
- An eligible credential from a post-secondary program of three years or more;
- An eligible credential from a university-level program at the master's level or at the level of an entry-to-practice professional degree (i.e. a law degree, engineering degree, etc.) for an occupation listed in the NOC at Skill Level A, for which licensing by a provincial regulatory body is required; or
- An eligible credential from a university-level program at a doctoral level.

The term "eligible credential" is defined as follows:

- A degree, diploma, certificate or trade or apprenticeship credential from a Canadian public post-secondary institution or from a Canadian private post-secondary institution that operated under the same rules and regulations as a Canadian public post-secondary institution;
- A *diplôme d'études professionnelles* or an *attestation de spécialisation professionnelle* earned through a program of study of at least 900 hours from a private secondary or post-secondary institution in Quebec; or
- A Bachelor's, Master's or doctoral degree from a Canadian private post-secondary institution, if a provincial statute authorizes that institution to confer that credential.

However, the following are not considered eligible credentials:

- Credentials obtained in a study or training program in which the study of English or French as a second language amounted to more than half of the program;
- Credentials obtained in a study or training program in which distance learning amounted to more than half of the program; or
- Credentials obtained in a study or training program while receiving a scholarship or fellowship that stipulated that the recipient return to their home country to apply the knowledge and skills gained.

CRS points are only awarded for the highest level of education and only if the following requirements are satisfied:

- For the purpose of obtaining the credential, the foreign national studied in Canada at a Canadian educational institution;
- For the purpose of obtaining the credential, the foreign national was enrolled in full-time study or training for at least eight months; and
- For the purpose of obtaining the credential, the foreign national was physically present in Canada for at least eight months.

Maximum CRS Points for Additional Factors

The 2016 Amendments define the phrase "additional factors" to include:

- Qualifying offers of arranged employment;
- A nomination under the Express Entry Stream of a PNP; and
- Canadian educational credentials.

They also make clear that the maximum number of CRS points that may be awarded for these additional factors is 600 points. So a foreign national who has already received 600 CRS points for being nominated under the Express Entry Stream of a PNP cannot also receive CRS points for a qualifying offer of arranged employment or for Canadian educational credentials.

Changes to the Deadline for Responding to an ITA

The 2016 Amendments increase the period of time that applicants will have to respond to an ITA. Under the previous Express Entry System, applicants had only 60 days to complete an online Application for Permanent Residence ("APR"). As of November 19, 2016, they now have 90 days to submit an online APR after receiving an ITA.

Miscellaneous Modifications

The 2016 Amendments also made several miscellaneous changes for the purposes of "consistently and clarity." For example, they now clarify that:

- The validity period of a spouse's language test results is two years;
- In order to receive CRS points for either Canadian or foreign work experience, wages must have been paid or a commission must have been earned;
- Candidates must also meet the requirements of at least one of the federal economic programs subject to Express Entry to satisfy the minimum entry criteria; and
- If a candidate claims CRS points for a job offer, officers have the authority to assess whether the candidate is able to perform and is likely to accept and carry out this arranged employment.

Treatment of Applicants in the Express Entry Pool

The last round of ITAs before the effective date of the 2016 Amendments took place on November 16, 2016. A total of 2,427 ITAs were issued; the CRS score of the lowest ranked candidate who received an ITA was 470 points. These candidates will continue to be assessed under the prior Express Entry System.

The CRS scores of candidates who were already in the Express Entry Pool prior to November 19, 2016, will be automatically updated to reflect the 2016 Amendments before the next round of ITAs takes place. However, these candidates will still need to update their Express Entry profiles and answer new questions before additional CRS points will be awarded for Canadian study credentials or for having a qualifying offer of arranged employment.