

Ministerial Instructions Issued by CIC Result in Significant Changes

by Henry J. Chang

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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 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 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. ■