

Express Entry System for Economic Immigrants

On 8 April 2014, CIC Minister Chris Alexander announced that the previously termed "Expression of Interest" (EOI) system will now be officially known as "Express Entry". As had been previously introduced in the EOI system, the Express Entry is a proactive approach meant to better address Canada's labour market needs.

Set to take effect in January 2015, the Express Entry system will be open to candidates with a valid job offer or approved provincial/territorial nomination. These candidates will be invited to apply for permanent residence under any of the following economic immigration streams: Federal Skilled Worker, Federal Skilled Trades, Canadian Experience or Provincial Nominee classes. CIC will then process their permanent residence applications on an expedited basis, within a period of six months or less. Thus, Canadian employers are expected to work with the government in selecting the best candidates to match their needs and who will be deemed deserving of being granted permanent residence in Canada.

Since the implementing details have yet to be released, the Express Entry system raises many questions not only about how this system will look like, but also how it would affect the scope and implementation of the current immigration programs.

Will the current eligible occupations lists under the Federal Skilled Worker and Federal Skilled Trades programs be revised or scrapped altogether? If the eligible occupations lists will remain, how will the processing of applications without specific job offers be affected? Don't the majority of the existing permanent residence applications under the economic streams already have valid job offers or provincial/territorial nominations? Is the government moving towards eliminating the permanent residence applications without a valid job offer or provincial/territorial nomination?

Hopefully, these and other related questions will be satisfactorily answered in the coming months and well before the targeted implementation date of January 2015 so as not to catch people by surprise and unfairly prejudice those who may have applied or are soon planning to apply under the programs where no valid job offer or nomination is required.

Some of these immigration changes, though touted as "fair and flexible", also have the potential of treating immigration applicants less fairly and flexibly. We can cite as clear examples from the recent past, CIC's return of pending applications under the Federal Skilled Worker class, as well as the closure of the Investor and Entrepreneur categories which also led to the return of thousands of applications after being placed in the back burner for so long. It is hoped that this time, bureaucratic convenience and economic objectives will not simply run roughshod over the basic principles of equal treatment and fair play.

Another aspect of equal treatment and fair play deals with the introduction of reasonable paths for permanent residency not just for high-skilled occupations (classified as NOC O, A or B) but also for the many more thousands of workers under the occupations requiring lower levels of education (NOC C and D).

Many temporary foreign workers who come to Canada to work under the NOC C and D occupations (primarily entry-level and manual jobs that most Canadians would rather avoid) are initially unaware that not only are they limited to a maximum of four years of authorized temporary work here, but also that there is no clear path for them to become permanent residents of Canada. Many of them learn about these limitations only after their renewal applications are refused and they are instructed by CIC to leave Canada.

For the handful who end up marrying or entering into common-law partnerships with Canadians and permanent residents, there is the option of applying for permanent residence as sponsored spouses. In exceptional circumstances, there is also the possibility of applying for permanent residence on humanitarian and compassionate grounds if the applicant can convince an immigration officer that there will be undue, undeserved and disproportionate hardship if the permanent residence application is not granted. For the rest of the temporary foreign workers under lower-skilled occupations, the options are not very promising. As a result, they become extremely vulnerable to abuse and exploitation from employers, recruiters and other unscrupulous individuals who will often take advantage of the workers' desperate need to remain in Canada.

Thus, it is also appropriate to ask why is it that the NOC C and D temporary foreign workers, who were also initially admitted based on valid job offers, are not being given any chance at the Express Entry system? Why should this priority processing be limited to the higher skilled occupations when there is also a demonstrated need for the workers requiring lower levels of education which gained them entry to Canada in the first place? We hope that our policymakers and legislators will also take these issues into consideration in their efforts to craft a truly fair and flexible immigration system for Canada.

Meanwhile, we must also note the previously announced changes which are set to take effect soon. These include the following new regulatory changes affecting international students effective 1 June 2014:

- Study permits will only be issued for students pursuing studies in educational institutions designated by CIC to receive international students
- Study permit holders will be authorized to work off campus for up to 20 hours a week during school periods and full time during school breaks without need to obtain a work permit
- Visitors may apply for a study permit from within Canada if they are at the pre-school, primary or secondary level, an exchange or a visiting student at a designated learning institution, or have completed a course or program of study that is a condition for acceptance at a designated institution
- A study permit becomes invalid 90 days after completion of studies
- International students may legally work after completion of studies until a decision is made on their application for a post-graduation study permit

As we have seen in the past several years, Canada's immigration landscape has become very volatile and complicated due to the many changes that have been made and which continue to be made. Thus, if you are dealing with any immigration or citizenship issues, it is best to exercise due diligence by consulting a trusted legal advisor to discuss your particular circumstances and obtain well-informed and competent legal assistance before it is too late.

Happy Easter to all!

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