

New Immigration Ministerial Guidelines

On 28 November 2008, the much-awaited Ministerial Guidelines for the implementation of the immigration amendments imposed by Bill C-50 were finally issued. The guidelines stated that for permanent resident applications submitted on or after 27 February 2008, only those that fall under any of the following categories will be processed: those whose skills and work experience fall under the “38 high demand occupations such as health, skilled trades, finance and resource extraction” or “have an offer of arranged employment or have already been living legally in Canada for one year as a temporary foreign worker or international student.” Those applications which do not fall under any of these categories will be returned unprocessed. These changes are meant to address the growing backlog in skilled worker applications which could take up to 6 years to process under the old system.

However, since the guidelines are only meant for applications submitted on or after 27 February 2008, it is not clear what will happen to the applications submitted before this date or how the 900,000 or so backlogged applications will be reduced. All that the ministerial guidelines state is the vague assurance that: “All applications and requests made prior to February 27, 2008, shall be processed in the manner existing at the time of application.” It was earlier reported that letters were sent to these previous applications asking if they are still interested in applying for permanent residence in Canada and if not, their processing fees will be refunded. If they fail to meet the deadline for the fees refund, then the application will be processed as usual, without any indication how slow or quick the processing will take. There are speculations that for these backlogged applications, the wait may even take much longer.

A possible alternative option for the pre-February 27, 2008 applications therefore, would be to send new applications if they satisfy the new criteria, so that they can be considered under the priority processing which will supposedly take between six months to one year. Moreover, the new Minister for Citizenship, Immigration and Multiculturalism Jason Kenney, explained that “Applicants who aren’t eligible for the federal skilled worker category may qualify under another category, such as the Provincial Nominee Program, or as temporary foreign workers, which could then put them on a path to permanent residency through the new Canadian Experience Class. There are many ways to immigrate to Canada.”

However, it must be noted that the only occupations which qualify under the new criteria are still those falling under either the National Occupational Classification (NOC) O, A or B (managerial, professional and some specified skilled trades). Many temporary foreign workers who arrived in Canada in recent years came under the Low-Skill Pilot Project and whose jobs fall under NOC C and D. Most of these workers were not properly informed that their skills and qualifications will not qualify for permanent residence application because they do not fall under NOC O, A or B. Even the new Canadian Experience Class only qualifies those with work experience under NOC O, A or B. Therefore, aside from the very few who may eventually qualify under the Provincial Nominee Program in some provinces, a great majority of these temporary foreign workers are forever caught in the cycle of temporary resident status in Canada, with very little chance of gaining permanent resident status.

Although the ministerial guidelines undoubtedly present good news for some, it appears to bring huge uncertainties for many others, particularly for those who have sent in their applications years ago. How much longer will they have to wait? Will the fact that they will be bumped off by those who meet the new criteria but who only applied very recently, constitute discrimination or some sort of unfair treatment? How often will the list of “high demand occupations” be updated to meet the job market realities? How can the government treat the immigration applicants who have waited a long time with such seemingly cavalier attitude? Why are the foreign workers in low-skilled occupations still being excluded from the skilled worker immigration category?

Unfortunately, the ministerial guidelines appear to have raised more questions than they can answer. What a way to end an economically tumultuous year.

Meanwhile, let us be thankful that the celebration of Christ’s birth continues to bring joy, hope and peace on earth. **A blessed Christmas and wonderful new year to all!**

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