

Express Entry System and Caregivers

There are barely two months left before the end of 2014 and the expected implementation date of the much-touted Express Entry system by Citizenship and Immigration Canada (CIC). However, CIC has yet to release the implementing details of this system that is scheduled to begin on 1 January 2015.

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

It has been clarified that this is not a separate immigration program but simply a framework and an entry door to the existing immigration programs (Federal Skilled Worker, Federal Skilled Trades, Canadian Experience and Provincial Nominee classes). The Express Entry system is meant to create a pool of prospective immigration applicants from which Canadian employers can choose potential employees who will then be invited to apply for permanent residence in Canada under one of the existing categories. 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.

Meanwhile, in the past few months, closed-door consultations were conducted by CIC among a select group of participants where the proposed changes to the Live-in Caregiver Program (LCP) were discussed. Most recently, those who attended these consultations have spoken with the media which led to various speculations, particularly on the proposal to incorporate caregivers into the Express Entry system.

Understandably, this alleged government proposal is causing a lot of confusion among caregivers and advocates. First of all, it is still unclear how caregivers will fit in the Express Entry framework. While it is alleged that caregivers will be encouraged to apply under the Canadian Experience Class, it is not very clear under what terms. Does this mean that the CEC will be amended to allow caregivers and other "low-skilled" (NOC C and D) or low-wage workers (earning below the median wage of \$21/hr in Ontario) to qualify for permanent residence after one or two years of full time work in Canada?

Overall, the lack of adequate information on 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?

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 (even expected to be reduced in the near future) 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.

Now that caregivers are being threatened with a similar fate, even more so-called low-skilled workers and their families will be seriously prejudiced.

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. If it is true that caregivers will be given a chance to qualify under the Express Entry system, will the same opportunity be granted to all other so-called low-skilled foreign workers? 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.

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, or will be affected by these changes, 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.

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