

Express Entry and TFW Program Updates

On 10 April 2015, CIC issued a news release welcoming the first three people who were granted permanent residence under the Express Entry, only three months after its launch and two months after the first round of invitations. One of the newest permanent residents is from Ireland who qualified under the Federal Skilled Worker class, and is now working as an application scientist in Ontario. The two others are former international students from China who qualified under the Canadian Experience Class and who are likewise already working for Canadian employers.

After submitting my article on the Express Entry system last month, three additional draws of applications have been conducted by Citizenship and Immigration Canada (CIC) to prospective permanent residence applicants. Since its launch on 1 January 2015 therefore, CIC has conducted a total of six draws and invited a total of 6,851 prospective applicants for permanent residence in Canada under the high-skilled occupations classes. The numbers of those given an invitation to apply (ITA) and lowest CRS scores for each draw are broken down as follows:

- On 31 January 2015, 779 Express Entry pool candidates were given an ITA with the lowest ranked candidate having a CRS score of 886 points
- On 7 February 2015, 779 Express Entry pool candidates were given an ITA with the lowest ranked candidate having a CRS score of 818 points
- On 20 February 2015, 849 Express Entry pool candidates were given an ITA with the lowest ranked candidate having a CRS score of 808 points
- On 27 February 2015, 1187 Express Entry pool candidates were given an ITA with the lowest ranked candidate having a CRS score of 735 points
- On 20 March 2015, 1620 Express Entry pool candidates were given an ITA with the lowest ranked candidate having a CRS score of 481 points
- On 27 March 2015, 1637 Express Entry pool candidates were given an ITA with the lowest ranked candidate having a CRS score of 453 points

At the rate CIC is going, it is highly possible that a new draw will be conducted anytime soon. If interested or if you have posted an Express Entry profile, you may check the CIC website at <http://www.cic.gc.ca/english/express-entry/rounds.asp> for more recent updates.

Meanwhile, CIC's highly-controversial policy for participants of the Temporary Foreign Worker (TFW) program - i.e. the four year cumulative duration limit, a policy which took effect on 1 April 2011, hit its first "victims" on 1 April 2015.

The various media outlets in print and broadcast, reported various cases of temporary foreign workers who felt unjustly treated as a result of this policy. Many of these workers are working in so-called low-skilled jobs and did not realize when they came to Canada, that their occupations did not have a guaranteed path to permanent residence. Since their jobs are not in the NOC O, A or B categories, they did not qualify for permanent residence under the existing classes that are accepted through the Express Entry system. Now, they are further prejudiced by the four-year cumulative duration limit, as not only are they forced to cease working in Canada after four years, but they will also need to stay outside Canada for at least four years before they can qualify to reapply for a new work permit.

On 1 April 2011, CIC released Operational Bulletin (OB) 275-C which states that since the new TFW regulations took effect on 1 April 2011, this is also the date when the clock starts ticking towards the four-year limit. Therefore, work permit refusals arising from the inability to meet the four-year limit only started on 1 April 2015.

However, the TFW regulations provide exceptions to the four-year limit if:

- the foreign national intends to perform work that would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens/PRs or
- the foreign national intends to perform work pursuant to an international agreement between Canada and one or more countries, including an agreement concerning seasonal agricultural workers.

OB 275-C also stated that the exceptions include permanent resident applicants from within Canada through the inland spousal sponsorship, humanitarian and compassionate, and Live-in Caregiver Program (LCP) routes.

On 22 May 2013, CIC released OB 523, which is meant to provide more specific operational guidelines and information regarding the four-year cumulative duration limit for temporary foreign workers. OB 523 clarified that "all work counts" in assessing the four year cumulative duration limit. The exceptions only become relevant when the worker applies to extend his/her work permit. That is, if they are applying for a work permit that falls under one of the exceptions cited above, the temporary foreign workers may be issued work permits beyond four years. This includes open work permit applicants for those granted approval in principle in their permanent residence applications such as those under the LCP.

However, these are general guidelines for straightforward cases only. There could be specific cases which may appear to fall under one of the exceptions but which actually do not. If you are unsure, it is best to consult a trusted immigration legal professional well before it is too late.

The author is a Filipino-Canadian immigration lawyer and may be reached via email at deanna@santoslaw.ca or tel. no. 416-901-8497.