

MEMORANDUM

DATE: Feb. 9, 2021

FILE NO.: 1222.015

TO: Muhammad WATTO

FROM: W. Macintosh

RE: IMMIGRATION - OPINION REGARDING STUDY PERMITS

I write this memorandum in response to your Feb. 5, 2021, e-mail in which you requested a legal opinion concerning the following.

You wanted clarification regarding paragraph 15 of my Jan. 31, 2021, memorandum. Specifically, in regard to the reference that the Intake Policy states that “distance learning” is not considered studies for purposes of the *Immigration and Refugee Protection Act* (IRPA) and do not require a study permit.

I assume you want to know if the policy statement means that “distance learning” does not constitute a Canadian educational credential for purposes of section 73 of the *Immigration and Refugee Protection Regulations* (IRPRegs).

I advise as follows:

STUDY PERMITS

A Legislative and regulatory provisions

a Immigration and Refugee Protection Act

1 The primary provision in IRPA concerning “**study in Canada**” is section 30. Subsection 30(1) establishes a broad rule that a foreign national may not “**study in Canada**” unless authorized under IRPA.

2 Subsection 30(1.1) authorizes an immigration officer to give permission to “**study in Canada**,” on application, in accordance to conditions set out in the Regs.

3 Neither “study in Canada,” “study” or “studies in Canada” is defined in IRPA, or the IRPRegs. The inference in the policy statement

b Immigration and Refugee Protection Regulations

4 A “study permit” is defined in section 2 as “a written authorization to engage in academic, professional, vocational or other education or training in Canada that is issued by an officer to a foreign national.”

5 Section 9 of the IRPRegs sets out the basic requirement that a foreign national must first obtain a study permit before entering Canada, unless study without a permit is authorized under section 188 or 189 of the Regs. Section 188 states in part:

No permit required

188 (1) A foreign national may **study in Canada** without a study permit

...

(c) if the duration of their course or program of studies is six months or less and will be completed within the period for their stay authorized upon entry into Canada; or

6 A Canadian educational credential is defined in Part 6, Division 1, subsection 73(1) of the IRPRegs, as follows:

Part 6 – Economic Classes

Division 1 – Skilled workers

Interpretation

Definitions

73 (1) The following definitions apply in this Division.

Canadian educational credential means any secondary school diploma or any post-secondary diploma, certificate or credential that is issued on the completion of a Canadian program of study or training at an educational or training institution that is recognized by the provincial authorities responsible for registering, accrediting, supervising and regulating such institutions. (diplôme canadien)

7 The definition applies only to Part 6, Division 1, of the IRPRegs and no other part of the regulations..

8 Part 12 of the Regs (ss. 210 to 222).sets out detailed rules relating the issuance of study permits. Section 210 establishes the “student class,” as a class of persons who may become temporary residents. Section 211 authorizes a foreign national as a student class member if they have been given authority to enter and remain in Canada as a student.

9 Section 211.1 defines “designated learning institution” as used in Part 12. In summary, it means in respect of post-secondary learning institutions in Canada, a “learning institution”: (1) administered by a federal department or agency; (2) in respect of post-secondary learning institutions in Canada that “host” international students in a province that has entered into an agreement with the Minister, that meets provincial requirements for delivery of education; and (3) with respect to Quebec, institutions established under various Quebec legislation.

10 Section 212 establishes a foreign national may “**study in Canada**” only if authorized by the Act, a study permit or the Regs.

c Ministerial Instructions

11 There are no Ministerial Instructions that deal with study permits or study in Canada.

d Program Delivery Instructions

12 Operational policy and guidelines for study and study permits are found in Program Delivery Instructions on the IRCC website.

13 Under *Intake Policy, Who needs a study permit*, it states that “distance learning” is not considered studies for purposes of IRPA and do not require a study permit.

14 *Processing policy: Study permits: Other Considerations* elaborates further on why distance learning is not considered studies for purpose of the study permit requirement. It states:

Distance learning

Distance learning can be through e-learning, correspondence, or internet courses. Distance learning is a process by which technology is used in ways where the student does not have to physically be in the place where the teaching is taking place.

Since by definition distance learning does not require one to be in Canada, a study permit **cannot be issued** for this type of course. For example, if a foreign national authorized to work in Canada is prohibited from engaging in studies as per a condition of their work permit, they are allowed to engage in distance learning courses.

However, some distance learning courses include an in-Canada portion to the program (e.g., special tutorials or the writing of final exams). If the overall course of study is greater than six months, then the student requires a study permit for the in-Canada portion of the program, even if the in-Canada portion is less than six months. **The duration of the study permit should be for the duration of the in-Canada portion only.**

B OPINION

15 This section provides an opinion as to whether or not “distance learning” education qualifies as a “Canadian educational credential” as set out in subsection 73(1) of the IRPRRegs.

16 The *Intake Policy* statement that “distance learning” is not considered studies for purposes of IRPA and do not require a study permit, appear to apply only in respect of the requirement to have a study permit to study in Canada. The policy statement appears to be the department’s interpretation of what constitutes “study in Canada” as used in the IRPRRegs, as that term is not specifically defined in the legislation.

17 The statement makes it clear that “study in Canada” for purposes of needing a study permit only relates to studies that physically occur in Canada. The interpretation appears to accept that “distance learning” is conducted virtually, not in person, even if the person is physically in Canada while taking the distance learning course.

18 This interpretation is reinforced by the further policy statement that if any part of the “distance learning” course requires an in person appearance in Canada, would require a study permit.

19 The requirement to obtain a study permit is separate and distinct from what qualifies as a Canadian educational credential. Section 73 of the IRPRegs makes no reference to the education being tied to having a study permit.

20 The fact that certain persons are expressly exempted from the study permit requirement under section 188 of the IRPRegs reinforces the distinction. Having a study permit requirement to obtain a qualified credential would create an irrational distinction for those classes of persons who do not require a study permit.

C SUMMARY

21 A person is entitled to claim Canadian educational credentials as long as it meets the requirements set out in section 73 of the IRPRegs. That does not include a requirement to have acquired the credentials through study permit exempt studies.

22 The reference in the *Intake Policy* that distance learning is not considered studies, is limited only to the requirement to have a study permit, not anything else.