

MEMORANDUM

DATE: Jan. 31, 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 Jan. 25, 2021, e-mail in which you requested a legal opinion concerning the following.

The requirements of a study visa or permit for students/application in the following categories:

- (1) Foreign worker in Canada on a valid work permit;
- (2) Foreign national on a visitor visa status in Canada: and
- (3) Foreign national outside Canada:

You asked specifically: Do any of the above categories, require a student visa or permit for a program over six months if the program is delivered through on-line distance education?

I advise as follows:

STUDY PERMITS

A Legislative and regulatory provisions

1 This section will deal with the provisions of the *Immigration and Refugee Protection Act* (IRPA) and the *Immigration and Refugee Protection Regulations* (Regs) directly related to the question posed above.

a Immigration and Refugee Protection Act

2 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.

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

4 Paragraph 32(d) authorizes regulations applicable to section 30, including the conditions that must or may be imposed, varied or cancelled, individually or by class, on foreign nationals, including conditions of study.

b Immigration and Refugee Protection Regulations

5 Section 9 of the Regs 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 Subsection 183(1) sets out general conditions that are imposed on all temporary residents. It includes paragraph (c), relating to study, that states:

(c) to not study, unless authorized by the Act, this Part or Part 12; and

7 Part 12 of the Regs (ss. 210 to 222).sets out detailed rules relating the issuance of study permits.

8 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 212 establishes a foreign national may study in Canada if authorized by the Act, a study permit or the Regs. 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.”

10 Subject to exceptions set out in sections 214 and 215, a foreign national has to apply for a study permit before entering Canada (Regs, section 213).

11 Section 214 sets out four specific categories of foreign nationals, related to a person’s resident or status in three specific foreign locations, who may apply for a study permit when entering the country.

12 Section 215 sets limitations on the categories of foreign nationals who may apply for a study permit after entering Canada.

c Ministerial Instructions

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

d Program Delivery Instructions

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

15 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.

16 In addition, it notes that short-term courses are exempt from the study permit requirement under para. 188(1)(c) of the Regs. In respect of short-term courses, it states:

Short-term courses [R188(1)(c)]

Foreign nationals may enter Canada or remain in Canada without a study permit to attend a course or program of study of 6 months’ duration or less [R188(1)(c)]. This exemption helps to facilitate access to short-term courses, regardless of their subject matter. The course or program of study may be part-time or full-time and should be completed within the period authorized upon entry (i.e., up to 6 months).

While a study permit is not required for short-term courses, an officer must accept and process an application for a study permit, even when the duration of the course or program of study is 6 months or less [R188(2)].

Holding a study permit for short-term courses may allow students to apply later, from within Canada [R215(1)(a)], to renew or change the conditions of their study permit for further studies. Study permit holders may also be eligible to participate in work programs that are available to international students [R186(f) and R205].

The duration of the course or program of study is often a more important consideration than the number of months the foreign national intends to study. With the exception of exchange programs, even if foreign nationals plan to study for 6 months or less, if the course or program is longer than 6 months, they need a study permit.

While a foreign national may attend a short-term course or program without a study permit at a non-DLI, they may not be issued a study permit to attend courses at a non-DLI [R216(e)].

Subsequent course or program of study

Generally, foreign nationals in Canada without a study permit wishing to enrol in a subsequent course or program of study must apply outside Canada and obtain a study permit in the normal manner (e.g., at a Canadian visa office abroad).

Foreign nationals without a study permit will not be granted an extension of their authorized stay as a visitor simply for the purpose of completing a short-term course or program of less than 6 months that would last beyond their original authorized period of stay. Paragraph R188(1)(c) was not put in place to allow foreign nationals to take short-term courses, one after the other, simply by extending their temporary resident status—in effect, making it possible for them to complete a whole certificate, diploma or degree without ever having a study permit. Immigration, Refugees and Citizenship Canada (IRCC) recognizes that long-term visitors and foreign workers may engage in occasional studies or programs of study lasting 6 months or less at any time during their stay in Canada.

It is therefore recommended that foreign nationals be encouraged to apply for a study permit for a short-term course or program of study if they intend to apply for another

program afterwards or work on the campus of the university or college at which they are a full-time student. [Section R215](#) provides an exemption to allow certain foreign nationals to [apply for a study permit after entry to Canada](#).

17 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

18 This section provides an opinion as to whether or not a student visa or permit is required for a program over six months if the program is delivered through the on-line distance education for the three categories noted above.

a Foreign worker in Canada on a valid work permit

19 A foreign worker in Canada on a valid work permit does not need a study permit to take the course if all elements of the courses are provided through on-line distance education.

20 The category appears to fit within the elements referred to in the Instruction noted in paragraph 17 above. In reference to "Distance learning" the instruction states a study permit cannot be issued for a distance learning course. That includes a course taken by foreign national authorized to work in Canada.

21 The Instruction has one qualification. The course cannot include an in-Canada portion to the program, such as special tutorials or the writing of final exams. Presumably

that refers to an in-person special tutorial and not one provided by distance learning.

22 In addition, under the short-term Instruction referred to in paragraph 16, it states the short-term course exception "was not put in place to allow foreign nationals to take short-term courses, one after the other, simply by extending their temporary resident status."

23 It is highly unlikely an extension application would be approved to allow a person to remain in Canada to complete a distance learning course. The obvious reason for that is that the course can be completed abroad if it is entirely a distance learning course.

b Foreign national with temporary resident status in Canada as a visitor

24 For the same reasons as noted in paragraphs 20 and 21 above, a foreign national with temporary resident status in Canada as a visitor can take a distance learning course exceeding six months if the course has no in-Canada portion.

25 In addition, as noted in paragraphs 22 and 23 above, it is highly unlikely the temporary status would be extended if the sole reason for the extension was to remain in Canada to complete the distance learning course.

c Foreign national outside Canada

26 As IRPA and its regulations deal solely with the rights of persons to physically enter and remain in Canada, it has no bearing on a foreign national outside of Canada who wants to enroll in a distance learning course from a provider based in Canada.

27 However, as noted in the Instruction concerning distance learning noted in paragraph 17, it appears a foreign national would have to obtain a study permit if there is any element of the course requiring the person to be physically in Canada, even if that element takes less than six months to complete.

C SUMMARY

28 A foreign national in Canada on a work permit does not require a study permit for a distance learning course exceeding six months, unless the course has an element that has to be completed in person in Canada.

29 A foreign national in Canada as temporary resident visitor does not require a study permit for a distance learning course exceeding six months, unless the course has an element that has to be completed in person in Canada.

30 A foreign national outside Canada does not require a study permit to take a distance learning course given by a service provider in Canada, unless the course has an element that has to be completed in person in Canada.