



Canadian Employee Relocation Council

180 Dundas St. W., Suite 1506

Toronto, ON M5G 1Z8

Tel: 416-593-9812 Fax: 416-593-1139

Toll-free: 1-866-357-CERC (2372)

E-mail: info@cerc.ca www.cerc.ca

December 17, 2014

The Honourable Chris Alexander, P.C., M.P.
Minister of Citizenship and Immigration Canada
Citizenship and Immigration Canada
365 Laurier Avenue West
Ottawa, Ontario
K1A 1L1

Dear Minister Alexander,

Express Entry – Ministerial Instructions

On behalf of the members of the Canadian Employee Relocation Council I am writing to express our concerns with the Ministerial Instructions (MIs) issued on December 1, for the administration of the Express Entry Immigration Program taking effect January 1, 2015. While we are most supportive of the key principles of the new program we are concerned that there are unforeseen consequences of the new Ministerial Instructions.

The impact of those instructions, in our respectful opinion, provide greater opportunities to foreign nationals residing outside of Canada than those currently employed in Canada. As you have stated on so many occasions, Canada's immigration system must create pathways to permanent residency. As written, we believe these instructions run counter to that objective.

As section 5(1) (b) of the MIs reads, an intra-company transfers (ICT) and provincially nominated workers in Canada on work permits (under Regulations 204 (a) and (c)), which are LMIA-exempt and normally eligible under FSW and FSTW must now obtain an LMIA in order to maintain their competitiveness against other candidates in the pool of qualified candidates who are in possession of a LMIA. While still eligible to apply under the FSW and FSTW categories, LMIA- exempt workers in Canada will only be granted the additional 600 points awarded under the Comprehensive Ranking System if they are in possession of a qualifying offer of arranged employment. Absent a LMIA, there is no transparency as to how such applicants will receive the invitation to apply.

The new instructions will create uncertainty for many companies with foreign nationals working in Canada under the provisions of intra-company transfers; foreign nationals working in Canada under the provisions of trade agreements (such as NAFTA), and foreign nationals working in Canada under Study Permits and Postgraduate Work Permits. The instructions have created uncertainty and a lack of transparency for "in Canada applications" from these highly skilled and in demand workers that have demonstrated Canadian experience and ability to economically establish themselves in Canada.

In our view these are the very applicants Canada should be encouraging to apply for permanent residency and, in time, citizenship. In many cases these foreign nationals hold senior management positions, many of those may in fact be CEO's of those companies. Requiring these individuals to now make application for permanent residency through the general pool of candidates is grossly unfair to those individuals and their families.

Further to these concerns, the new MI's also unfairly impact foreign nationals working in Canada under the Provincial Nominee Programs. While a foreign applicant (not working in Canada) can enter the pool based on provincial nomination, those in Canada who are nominated and working for the prospective employer, based on work permits issued under the PNP, will now also be required to obtain a LMIA in the hopes that their application will be selected.

Contrary to what has been stated by CIC officials to date, namely foreign workers on 204(a) and (c) work permits would not categorically need a LMIA (as they could conceivably get ITA based on human capital and other non-LMIA points) these workers will rank lower than those candidates who have a LMIA and there is no measure of certainty as to how they will be selected.

The implications of this provision will present unforeseen outcomes for employers and our economy. Key management and specialized workers in Canada under the LMIA-Exempt categories will no longer have predictability and transparency when applying for permanent residence to Canada. As a result multinational companies may begin to re-evaluate the feasibility of long term operations in Canada if not afforded the opportunity to manage their key talent and meet business needs. This has the potential for net Canadian job loss over time as key positions and or operations are moved to locations outside of Canada who can offer companies the predictability they require.

We are equally concerned that the Canadian Experience Class (previously identified as a key indicator of success) receives no consideration in the new MIs. For example, international students would no longer qualify, as the requirement for obtaining an LMIA is not offset with the recognition of Canadian degrees and (entry level) Canadian job experience. As a result these graduates, (many of whom may be considered among the brightest and the best of potential immigrants) will be motivated to leave Canada. This makes both the Study Permit and Postgraduate Work Permit categories redundant.

Similarly foreign entrepreneurs operating business in Canada which employ Canadians cannot rely on their Canadian experience and may not qualify due to self-employed provisions. Such applicants would not only be required to obtain LMIA's but can only qualify based on their foreign based experience which may not correspond with the LMIA. The new MIs provide no recognition for those who have established businesses in Canada, who in many cases transfer knowledge and new technologies and directly employ Canadians.

The new instructions will also create uncertainty for applicants as there is no means by which they will know who they are being measured against, and on what criteria the ultimate selection is made. In the globally competitive market of attracting the brightest skilled immigrants, the prospects of sitting in a pool of applications without any assurance of which criteria will ultimately lead to selection has the potential to deter many highly qualified professionals from applying..

Minister, we urge careful consideration of the issues we have presented, which may result in the loss of the very highly skilled professionals Canada is competing for on a global basis. While we are supportive

of the key principles of the new system we are concerned that there are unforeseen consequences of the new Ministerial Instructions.

We would be pleased to meet with your office to discuss these issues in greater detail and find workable solutions to the issues we have raised.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stephen Cryne', with a stylized flourish at the end.

Stephen Cryne
President and CEO, Canadian Employee Relocation Council