

## **Intra-company Transferees (ICTs)**

### **Purpose**

To provide an overview of Canada's current ICT provisions, guidelines and to seek your views on potential changes under consideration.

### **Current Provisions for ICTs**

Canada allows the entry of foreign qualified ICTs by international enterprises for purposes of improving management effectiveness, expanding Canadian exports, and enhancing the competitiveness of Canadian enterprises in overseas markets. Canada also undertakes ICT commitments through its international trade agreements such as in the NAFTA and GATS.

Key requirements that CIC considers in assessing ICT applications include:

- Relationship between the Canadian and foreign employer
  - The Canadian and foreign enterprises must be legal entities that have a parent, subsidiary, branch or affiliate business relationship.
  - Both the Canadian and foreign companies must be, or will be doing business (i.e. regularly, systematically, and continuously providing goods and/or services by a parent, branch, subsidiary, or affiliate in Canada and the foreign country).
- Relationship between the employer and temporary foreign worker
  - An employer-employee relationship must exist with the Canadian entity to which they are being transferred. The essential element in determining this relationship is the right of the employer to order and control the employee in the performance of their work.
- Transferring to a position in an executive, senior managerial, or specialized knowledge capacity
  - Must have worked continuously outside Canada (full-time, not accumulated part-time) for at least one year within the previous three years in a similar position for the company that plans to transfer them to Canada.

### **Specialized Knowledge Workers**

Specialized knowledge is unusual and different from that generally found in a particular industry. The knowledge need not be proprietary or unique, but it should be uncommon.

- Some characteristics of a worker who has specialized knowledge are:
  - critical to the well-being of the enterprise;
  - uniquely qualified to contribute to the Canadian employer's knowledge of foreign operating conditions;
  - valuable to the employer's competitiveness in the market place;
  - a former key employee abroad in significant assignments which have enhanced the employer's productivity, competitiveness, image, or financial position.
- Characteristics of specialized knowledge include:
  - business process or method operation that is unusual;
  - not generally available and of complexity that is not easily transferable;
  - gained through extensive prior experience with the employer.

Other elements used in assessment of specialized knowledge include:

- **Occupation** - what level is the position's National Occupational Classification (NOC)?
- **Education** - is a diploma or degree required for the position sought?
- **Experience** - how many years of experience does the TFW have with the foreign company? how many years of experience does the TFW have in the industry?
- **Salary** - does the TFW's salary – when considered along with years of experience – support the claim?
- **Training** - what level of training is needed for a position that requires specialized knowledge?
- **Supporting documentation** - documents to prove the claim of specialized knowledge: an outline of why specialized knowledge applies, a resumé, reference letters or letters of support from the company

### **Potential changes under consideration**

*The focus is on potential changes to current or new indicators of specialized knowledge.*

1. **Wage indicator** – the average Canadian wage for the occupation/location is currently used as a significant indicator of specialized knowledge. Options could include increasing the wage or creating a minimum salary level regardless of category to reflect the positions of executive/senior manager/specialized knowledge.
2. **Experience** – in reference to both “related” (job specific) and/or company experience, potential to reference a minimum number of years of related work (e.g. 5 years) or company experience (e.g. 3 years) as an indicator for consideration in the determination of specialized knowledge.
3. **Extent of specialized knowledge workers** –limiting the proportion of the Canadian company workforce that could be considered as specialized knowledge ICTs, or the number of specialized knowledge ICTs that could be assigned to a single work project.
4. **Third-party work site** – potential to impose limitations on ICTs assigned to third- party work sites.

### **Questions for discussion**

1. How is your enterprise currently using the ICT provisions?
2. Should ICTs be used as a means to fulfill service contracts?
3. Does your enterprise place ICTs in third-party locations on a full-time basis?
4. What would be the impact of the potential changes on your enterprise?
5. What other factors could assist the assessment of specialized knowledge workers?