

December 5, 2014

MEMBER UPDATE

Express Entry Immigration program: Ministerial Instructions

Immigration Minister Chris Alexander has released the long awaited Ministerial Instructions governing the new Express Entry System which takes effect January 1, 2015. While the principles of the program are in the right direction, there are some significant concerns about the impact of these Instructions on workers already employed in Canada under intra-company transfers, trade agreements (e.g. NAFTA), provincial nominee programs and post graduate students that wish to apply for permanent residency status.

The Express Entry system applies in respect of:

- a) the federal skilled worker class (FSW);
- b) the Canadian experience class (CEC);
- c) the federal skilled trades class (FSTC); and
- d) certain categories of the provincial nominee program express entry stream:

Under the new system applicants will be required to submit an electronic expression of interest to apply for permanent residence to Canada. Applicants will be entered into a pool of candidates for a period of up to one year. Applicants will be ranked based on the new Comprehensive Ranking System, which consists of the following components:

- a) Core human capital factors, including age, education, language proficiency and Canadian work experience;
- b) Accompanying spouse or common-law partner factors;
- c) Skill transferability factors; and
- d) Factors relating to a provincial nomination or a qualifying offer of arranged employment. (The latter must be in NOC skill type O occupations, or skill level A or B. Note that a qualifying offer or arranged employment from an employer is subject to a positive LMIA from ESDC)

A total of 1200 points is allocated as follows:

- (a) for a foreign national who has no accompanying spouse or common-law partner
 - (i) a maximum of 500 points for the core human capital factors,
 - (ii) a maximum of 100 points for skill transferability factors, and
 - (iii) a maximum of 600 points for either a provincial nomination or a qualifying offer of arranged employment; and
- (b) for a foreign national who has an accompanying spouse or common-law partner
 - (i) a maximum of 460 points for the core human capital factors,
 - (ii) a maximum of 40 points for accompanying spouse or common-law partner factors,
 - (iii) a maximum of 100 points for skill transferability factors, and

(iv) a maximum of 600 points for either a provincial nomination or a qualifying offer of arranged employment.

To qualify for an invitation, the applicant must meet the requirements of either the FSWC, CEC, FSTC or applicable PNP. Applicants without a qualifying offer of arranged employment (LMIA approved by ESDC), or those that have not been nominated under an approved PNP must, within thirty (30) days of submitting their expression of interest, register with the Job Bank of the Department of Employment and Social Development.

Once an invitation to apply for permanent residence is sent to a successful applicant it is valid for 60 days. If the invitation is not declined, and an application for permanent residence is not made within that time period, the foreign national's expression of interest comes to an end, regardless of the remaining portion of the allocated one-year period.

Concerns and comments

There are many legitimate concerns surrounding the uncertainty applicants will face and the process through which applicants will be selected. For example, there is no indication in the MIs as to what the pass mark will be in the Comprehensive Ranking System, nor is there any clarification as to how applicants will actually be selected from the pool.

Canadian Experience (previously identified as key indicator of success) appears to not receive any consideration under the MIs. For example, international Students cannot make it out of the pool with certainty, since the requirement for obtaining an LMIA (which is not realistic for recent graduates) is not offset with the recognition of Canadian degrees and (entry level) Canadian job experience.

In the case of provincial nominees while a foreign applicant (not working in Canada) can enter the pool based on provincial nomination, those in Canada who are nominated and working on bridging work permits for the prospective employer, will now be required to obtain a LMIA in order to be eligible under Express Entry. Thus, the provisions appear to promote workers to depart and/or not enter Canada (instead of obtaining work permits and working in their intended occupation) in order to not be caught by the requirements of obtaining LMIAs.

As for intra-company transfers, and workers under trade based agreements, which are LMIA exempt and normally eligible under such categories as CEC, FSW and FSTW, they must now obtain LMIAs for employment they are currently doing, in order to be placed in the candidate pool. Their Canadian work experience of 5 or more years, counts for a mere 80 of the possible 1200 points. This additional requirement is curiously placed only on those who are in Canada on work permits (which are recognized as categories not directly competing for Canadian jobs) and not those residing abroad during the application process.

CERC will continue to track and report on developments, and has raised these concerns Minister Alexander.

Stephen Green, Green and Spiegel LLP, contributed to the preparation of this special update.

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