

CURRENT ISSUES IN IMMIGRATION LAW

Davis LLP's Immigration Law Practice Group prides itself on being at the forefront of recent and pending developments and updates in immigration laws and policies. To deliver enhanced value to our clients, we are happy to introduce the first issue of our Immigration Update Bulletin.



Davis LLP's Immigration Law Practice Group provides a broad range of citizenship and immigration advice and services to our domestic and international clients. The experience gained by acting on hundreds of applications per year provides us with the knowledge, insight and contacts necessary to formulate and implement solutions that best suit our clients' needs. Our Group has, over the course of many years, established an excellent working relationship with the spectrum of citizenship- and immigration-related government agencies. Our submissions are recognized by government agencies as being of the highest quality.

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Avoiding 2010 Olympics and Paralympics Volumes

Senior officials from Citizenship and Immigration Canada and Service Canada recently cautioned that they are expecting application volumes to increase dramatically around the time of the 2010 Olympic and Paralympic Games. They estimate that the increase will be at its greatest between December 12, 2009 and April 21, 2010, i.e., starting 60 days before the Olympics and ending 30 days after the Paralympics. Service Canada expects the greatest volume for Labour Market Opinion ("LMO") applications between January 22 and February 28, 2010.

Similarly, high volumes are expected at the Vancouver International Airport and local Canada-US borders around the time of the Games (February 12 to March 21, 2010).

What this means is that visa and temporary status applications will likely take longer to process at visa offices abroad between December 12, 2009 and April 21, 2010, and employers may want to avoid having foreign workers apply at the Vancouver International Airport or local borders between February 12 and March 21, 2010. Similarly, if you have plans on making LMO applications in BC this winter, it would be best to submit them either well before January 22, 2010 or after February 28, 2010.

Proposed Regulatory Changes to Canada's Temporary Foreign Worker Program

On October 9, 2009, the Minister of Citizenship and Immigration Canada announced proposed regulatory changes to Canada's Temporary Foreign Worker Program. The amendments are meant to address the unprecedented growth in the number of Temporary Foreign Workers in Canada, along with concerns for their fair treatment. The changes would include:

- a more rigorous assessment of the genuineness of job offers made to all Temporary Foreign Workers;
- limits to the length of a worker's stay in Canada before returning home. A maximum cumulative duration of four years of work for Temporary Foreign Workers, followed by a period of at least six years in which they would not be authorized to work in Canada (subject to certain exceptions), would be implemented; and
- a two-year prohibition from hiring a temporary foreign worker for employers found to have provided significantly different wages, working conditions or occupations than promised. A list of ineligible employers would be made available on Citizenship and Immigration Canada's external website.

These proposed changes will have a dramatic impact on organizations that employ Temporary Foreign Workers. We will continue to keep our clients apprised of the status of the regulatory amendments as further information becomes available.

Service Canada's LMO Policy Changes

Earlier this year, Service Canada introduced more rigid "[Minimum Advertising Requirements](#)" for LMO applications in response to the recession, making it clear

that demonstrating sufficient Canadian recruitment is now Service Canada's primary consideration when processing LMOs. The decreased flexibility has resulted in the LMO refusal rate increasing from 25% to 34%.

On August 31, 2009, Service Canada further revised these minimum requirements to clarify that for occupations in Skill Level B (normally requiring college education or apprenticeship training), advertising consistent with the practice for the occupation must be conducted, *in addition* to placing an ad on the national Job Bank. For all occupations, "ongoing recruitment efforts" are encouraged. This opens up the possibility of an employer being asked to conduct further advertising. In light of this, it is best to err on the side of too much advertising than not enough.

Additionally, applications for LMO extensions were eliminated as of April 27, 2009. An employer must now apply for a brand new LMO, generally requiring new recruitment efforts, in order to extend a temporary foreign worker's work permit.

Effective May 19, 2009, all LMOs will be issued with a six-month expiry date, and so must be used within six months from the date of issuance. LMOs issued prior to May 19, 2009 which do not have expiry dates will be deemed to expire on November 19, 2009.

Retaining Temporary Foreign Workers in the Wake of Change

In light of the above-mentioned proposed regulatory amendments and Service Canada's recent LMO policy changes, it is important to develop long-term strategies to retain temporary foreign workers. For example, an employer may wish to consider supporting an employee's application for permanent residence. It is important to understand that permanent residents (versus temporary foreign workers) may work in any occupation with

any employer in any province, without the need to obtain a work permit.

While there are several categories of permanent residence, employers are generally interested in the following in order to retain qualified temporary foreign workers:

Federal Skilled Worker

Under the Federal Skilled Worker program, individuals are eligible to apply for permanent residence if they have an offer of arranged employment with a Canadian employer; have been residing legally in Canada for at least one year as a temporary foreign worker or international student; or have at least one year of experience under at least one of 38 prescribed occupations. Once eligibility to apply for the program is confirmed, an individual must pass a point assessment based on factors such as education, work experience, language ability, age, arranged employment and adaptability, to be approved.

The average processing time for the Federal Skilled Worker program is estimated at 8-15 months.

Provincial Nominee Programs

Most provinces in Canada administer programs designed to facilitate regional immigration that will yield local economic benefits. Once an individual is nominated by a province, Citizenship and Immigration Canada will expedite the processing of the individual's permanent residence application. While nomination processing times vary from province to province, if successful, processing of the permanent residence application usually takes 6 to 12 months. Further, provincial nominees can extend their work permits in the meantime without an LMO.

Canada Experience Class

Foreign workers and foreign graduates who have least two years of skilled work experience in Canada, or received a qualifying diploma, degree or trade or apprenticeship credential as well as at least one year of skilled work experience in Canada, and have sufficient language proficiency, may consider applying for permanent residence under the CEC. The permanent residence application should be processed within 5-9 months.

Processing Times at CPC Vegreville

Those intending to extend their work permits, study permits or visitor records may wish to apply further in advance, as processing times at Citizenship and Immigration Canada's Case Processing Centre in Vegreville remain high. For example, it is currently taking 86 days for work permit extensions to be processed.

Individuals who have applied for work permit extensions prior to the time that their current work permits expire may continue working on 'implied status' until their application is processed. Nevertheless, their ability to travel and their medical coverage while on implied status will likely be impacted.

The Employer's Roadmap: Internationally Trained Workers

The Federal Government has introduced a website titled [The Employer's Roadmap](#) that is intended to assist employers assess the qualifications of internationally trained workers. Similarly, [The Working in Canada Tool](#) is intended to provide newcomers to Canada with information about living and working in Canada.

Immigration Law Practice Group

The Davis LLP Immigration Law Practice Group consists of experienced solicitors and litigators providing a broad range of citizenship and immigration services to small, medium and large companies in various sectors and to individuals from all backgrounds.

Our expertise includes:

- Labour Market Opinion applications
- Work Permit applications pursuant to the *Immigration and Refugee Protection Act* and Regulations, NAFTA and other International Agreements
- Facilitating business travel to Canada
- Permanent Residence applications in the Federal Skilled Worker Class, Canadian Experience Class, Family Class and Investor Class
- BC Provincial Nominee Program applications
- Quebec Immigration applications
- Citizenship and Proof of Citizenship applications
- Assisting foreign nationals to overcome Inadmissibility issues, e.g., criminal, health or otherwise, by way of temporary resident permits, rehabilitation, authorizations to return and other means
- Representing foreign nationals at immigration appeal hearings

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