

Canada's Changing Immigration Landscape October 1, 2008

In recent months there have been a number of changes and proposed changes to Canada's immigration program and we expect that these changes may impact many of our clients – particularly those who have Applications for Permanent Residence in the preparation stage. On Friday August 15th I was in Ottawa, the nation's capital, for consultations with the Minister of Citizenship & Immigration, the Deputy Minister and key immigration policy advisors to discuss these changes.

Having acknowledged the shortcomings of the Federal Skilled Worker Immigrant Class and passed Bill C-50, the government plans to modify various aspects of Canada's immigration program in an effort to better align immigration processing with labour market demand. However, the Canadian election called for October, 14, 2008 has added another element of uncertainty to the changing landscape of Canadian immigration as some of the legislative, regulatory and policy changes introduced prior to the election have recently been, or are expected to be, implemented while the fate of others is less certain. While it is simply too early to be conclusive, below is a brief overview of some of the changes that we anticipate.

Ministerial Instructions

The Conservative government's Budget legislation, which contained changes to immigration in Bill C-50, was passed on June 10, 2008. The changes give the Minister of Citizenship & Immigration new powers to fast track certain groups of potential immigrants. While it is still too early to predict exactly how immigration processing will be impacted, shortly before the election call, there was a federal-provincial-territorial meeting on immigration at which the federal government presented its plans for instructions. A subsequent Toronto Star Article suggests that the admissions of skilled workers will be limited to those who qualify for one of 38 priority occupations. At the time of writing, the new Ministerial Instruction scheme has not yet been implemented and neither this approach or the occupations have been confirmed; however we do anticipate its introduction in the upcoming months and will be closely monitoring all developments.

Arranged Employment

There are strong indicators that Canada's immigration program will become more closely aligned with labour market forces. For instance, the new regulatory definition of 'arranged employment', where applicants are credited for qualifying employment in Canada, is more inclusive. Generally speaking the new regulations are designed to prioritize and encourage those foreign nationals with employment ties in Canada, by way of current employment under a work permit category and/or future employment opportunity based on a *bone fide* job offer. Strategically speaking, those foreign nationals already working in Canada are likely to benefit from priority processing – an increasingly important factor as backlogs will likely continue to grow.

The Canada Experience Class

The Canada Experience Class (CEC) officially opened for business on September 17, 2008. The CEC is a new class of economic immigration designed to facilitate the transition of temporary residents to permanent residency. The CEC is designed to facilitate qualifying recent foreign graduates and certain temporary foreign workers in becoming Permanent Residents; it is designed to fast track applicants who have already established themselves in Canada. All applicants must have come to Canada to work or study, have been lawfully admitted to Canada, and have temporary resident status in Canada at the time of making the application.

The regulations create two distinct transition streams with different thresholds. Foreign graduates will need 12 months of qualifying work experience within a 24-month period prior to making a CEC application, to study in Canada on a full-time basis for at least two academic years, and meet the language benchmark for their occupation skill level. Temporary foreign workers will need 24 months of qualifying work experience in Canada within a 36-month period prior to making a CEC application and to meet the language benchmark for their occupation skill level.

While the CEC is designed to simplify and expedite the immigration process it will nonetheless contain a number of substantive and procedural requirements. For instance, it will be limited to Skill Type O Management Occupations, Skill Level A (professional occupations), or Skill Level B (technical occupations and skilled trades) of the *National Occupation Classifications* (NOC). Lower-skilled occupations (NOC skill levels C and D) will not be eligible, as they are viewed as more vulnerable in economic downturns. The Globe and Mail reports that the CEC is expected to grant permanent resident status to 12, 000 - 18,000 economic immigrants in the first year, a figure that's forecast to rise to 25,000 annually over time but is not expected to increase the total number of economic immigrants. This information is consistent with my own discussions with those involved in designing and implementing the program.

The Status Quo - The Skilled Worker Class

At the time of writing many Visa Offices are awaiting direction and are not processing Skilled Worker applications. For instance, the Regional Processing Center (RPC) in Buffalo has put all applications received on, or after, February 28, 2008 "on hold" until the Minister provides instructions as to which cases are to be accepted for processing. In short, it is unclear as to exactly how and when the Minister's increased powers will impact immigration processing and at present, processing is in limbo.

While there is no official plan to terminate the Skilled Worker Class my own view is that it will take a back seat to the changes that I have mentioned above. In light of growing backlogs and associated processing delay, this class, often referred to as the "points system" is under intense and increasing criticism and it appears that there is, little political will to make the Skilled Worker program in its present form work. As such we are, on behalf of our clients, carefully considering filing alternatives as they are introduced.

Remarks

The new Canadian immigration landscape will be characterized by increased government discretion; we can also expect detailed transition procedures and increased processing restrictions. For instances, in an effort to stem the tide of multiple applications likely to result from applicants switching from an existing program to a new program, foreign nationals who are already in the permanent residence process will not be permitted to qualify under the CEC. Presumably, applicants will have to withdraw their original application to make an application under the CEC class. As well, although an applicant meets all of the qualification criteria for a particular program, he or she will no longer be able to assume that the application will be accepted. Rather, in the new immigration landscape the government will have the discretion to decide whether to process an application. On the up side there are plans to open a Case Processing Center in Canada which will be responsible for the assessment of some files.

It is clear that the changes are part of a government plan to regain control of an immigration program that has been losing traction and to reprioritize the processing of permanent residence applications - opening the door wider for some applicants while narrowing it for others. In practical terms I expect that once the growing pains are resolved, the process will be capable of expediting some applications but that the processing of other application will slow to a virtual stand still. As such, filing strategy will be absolutely critical to satisfactory results.

In the upcoming weeks, my office will be reviewing all of our Application for Permanent Residence files and advising clients as to how they can best position themselves in the new Canadian Immigration landscape. We look forward to assisting you in navigating this new terrain.