



CSIC | Canadian Society of
Immigration Consultants
SCCI | Société canadienne de
consultants en immigration



Tapping into Foreign Workers

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Temporary Workers

- Introduce the Canadian Society of Immigration Consultants
- Review some of the Law Governing Foreign Workers in Canada
- Employment Process – Roles, Temporary Foreign Worker Units
- Labour Market Opinions
- Examine Existing Programs
- Discuss the National Occupational Classification System
- Third Party Representatives
- Resources for Employers



CSIC – Who we are

- Responsible for regulating activities of paid immigration consultants pursuant to IRPA/IRPR
- CSIC accredits the education and competency of its members
- CSIC holds its members accountable to a Code of Conduct, ensures that members carry Errors and Omission Insurance and a compensation fund



Foreign Workers – The Law

- **Federal Level** – The Immigration and Refugee Protection Act and its Regulations
- **Provincial Level** – A majority of the Provinces have entered (or are about to) the field of Temporary workers with legislation that deals with immigration and Employment standards



Immigration and Refugee Protection Act (IRPA)

Principal Goals of the IRPA

- 3 (1)(g) To facilitate the entry of visitors, students and temporary workers for purposes such as trade, commerce, tourism, international understanding and cultural, educational and scientific activities;
- 11. (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.



Immigration and Refugee Protection Act (IRPA)

Examination by officer

- 18. (1) Every person seeking to enter Canada must appear for an examination to determine whether that person has a right to enter Canada or is or may become authorized to enter and remain in Canada.
- 30. (1) A foreign national may not work or study in Canada unless authorized to do so under this Act.



Immigration and Refugee Protection Regulations (IRPR)

"work" means an activity for which wages are paid or commission is earned, or that is in direct competition with the activities of Canadian citizens or permanent residents in the Canadian labour market. (travail)

"work permit"

- "work permit" means a written authorization to work in Canada issued by an officer to a foreign national. (permis de travail)

Temporary resident

- 7. (1) IRPR A foreign national may not enter Canada to remain on a temporary basis without first obtaining a temporary resident visa.



Immigration and Refugee Protection Regulations (IRPR)

- 179. IRPR An officer shall issue a temporary resident visa to a foreign national if, following an examination, it is established that the foreign national
 - (a) has applied in accordance with these Regulations for a temporary resident visa as a member of the visitor, worker or student class;
 - Visa exemption — nationality



Immigration and Refugee Protection Regulations (IRPR)

190. (1) IRPR A foreign national does not require a temporary resident visa if they

- (a) are a citizen of Andorra, Antigua and Barbuda, Australia, Austria, Bahamas, Barbados, Belgium, Botswana, Brunei Darussalam, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Federal Republic of Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Monaco, Namibia, Netherlands, New Zealand, Norway, Papua New Guinea, Poland, Portugal, Republic of Korea, St. Kitts and Nevis, St. Lucia, St. Vincent, San Marino, Singapore, Slovakia, Slovenia, Solomon Islands, Spain, Swaziland, Sweden, Switzerland or Western Samoa;
- (b) are
 - (i) a British citizen,
 - (ii) a British overseas citizen who is re-admissible to the United Kingdom, or
 - (iii) a citizen of a British overseas territory who derives that citizenship through birth, descent, naturalization or registration in one of the British overseas territories of Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn Island, Saint Helena or Turks and Caicos Islands; or
- (c) are a national of the United States or a person who has been lawfully admitted to the United States for permanent residence.



Immigration and Refugee Protection Regulations (IRPR)

- 198. (1) IRPR Subject to subsection (2), a foreign national may apply for a work permit when entering Canada if the foreign national is exempt under Division 5 of Part 9 from the requirement to obtain a temporary resident visa.
- Exceptions
- (2) A foreign national may not apply for a work permit when entering Canada if
 - (a) a determination under section 203 is required, unless
 - (i) the Department of Human Resources Development has provided an opinion under paragraph 203(2)(a) in respect of an offer of employment — other than seasonal agricultural employment or employment as a live-in caregiver — to the foreign national, or



Employment Process – Foreign Worker

Once you have decided to recruit a Foreign Worker

- A Labour Market Opinion (LMO) is in most cases required - However there are some exceptions

Agencies Responsible – Understanding Roles

- HRSDC / Service Canada (Labour Market Opinion)
- Citizenship & Immigration (Responsible for issuing Temporary Residents Visa (TRV) for persons not covered in section 190 (IRPR)
- Canada Border Services Agency (Agency that issues most actual work permits)
- The Border Services Officer remains the delegated Work Permit decision maker



Foreign Worker Process

LMO

- Employer Recruits Foreign Worker (HRSDC)
- Employer Obtains Labour Market Opinion

TRV

- Foreign worker Applies to Canadian Embassy for TRV (CIC)
- or in some cases Directly at Port of Entry (s190) (CBSA)

WORK
PERMIT

- Once TRV obtained Foreign Worker needs to apply for Work Permit upon Entry to Canada (CBSA)



Temporary Foreign Worker Units

Jointly Created by CIC and HRSDC under IRPA with a mandate to:

- Educate employers and their representatives on the process of hiring a temporary foreign worker;
- Act as a resource for employers and service delivery partners;
- Determine, upon request, if a foreign worker position appears to be exempt the requirement for a Labour Market Opinion (LMO) from Service Canada.



What is the Basis of HRSDC LMO

(3) An opinion provided by the Department of Human Resources Development shall be based on the following factors:

- (a) whether the employment of the foreign national is likely to result in direct job creation or job retention for Canadian citizens or permanent residents;
- (b) whether the employment of the foreign national is likely to result in the creation or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;
- (c) whether the employment of the foreign national is likely to fill a labour shortage;



Labour Market Opinion (Cont)

- (d) whether the wages offered to the foreign national are consistent with the prevailing wage rate for the occupation and whether the working conditions meet generally accepted Canadian standards;
- (e) whether the employer has made, or has agreed to make, reasonable efforts to hire or train Canadian citizens or permanent residents; and
- (f) whether the employment of the foreign national is likely to adversely affect the settlement of any labour dispute in progress or the employment of any person involved in the dispute.



How to Apply for a LMO

- Application can be submitted by the employer either by mail/fax or on-line
- You can use a representative but are not required to do so
- You must provide documentation to support the request for a positive LMO– genuine job offer, wages and working conditions must be comparable to that offered to Canadians or Permanent Residents
- You must provide proof of advertising and/or show that you have made reasonable efforts to hire or train Canadians or Permanent Residents



Applying for an LMO (Cont)

- The HRSDC officer will also examine whether the Foreign Worker is filling a labour shortage in your company and look to see if offer of employment will directly create new jobs or result in retention of existing jobs
- Transfer of new skills and knowledge to Canadians and PR
- Hiring of foreign worker will not affect labour dispute



I have received Positive LMO, now what?

- Once you have received a positive decision you will need to provide your prospective employee with a copy of the LMO.
- Employee will then need to apply for a Temporary Resident Visa through the Canadian Consulate responsible for him if he is required to apply through a Consulate (Section 190 Countries)
- Officer will review foreign worker's job contract, employment background, experience, education and may examine medical and criminal requirements.
- ***IMPORTANT - Positive LMO does not guarantee that work permit will be issued***



Positive LMO..... Now what?

- Foreign worker must then apply and obtain Temporary Resident Visa (Unless Visa Exempt per s190) and can then proceed to Canada where he **may** be issued a work permit at the Port of Entry (CBSA).
- Depending on Citizenship of the Foreign Worker , your employee may be able to apply directly at the Port of Entry (CBSA) for a Work Permit without going through a Canadian Visa office for the issuance of a Temporary Resident Visa. Section 190 IRPR



Current Programs/Projects

- Pilot Project for NOC skill level C&D

Allow low-skilled foreign workers to obtain up to 24 months work permit (12 months maximum before)

- E-LMO expedited Process for BC and Alberta

Allow a 5-day expedited process for eligible employers

- Provincial Occupations under pressure list

Employers will not be required to undertake lengthy or comprehensive advertising efforts before being eligible to apply to hire a foreign worker



What is NOC

- National Occupational Classification
- Jobs are classified into 5 groups in terms of skill level
- O, A, B, C & D
- O is Management occupations
- A – occupations requiring university education
- B – occupations requiring college education or apprenticeship training
- C – Occupations require secondary school and/or occupation-specific training.
- D - On-the-job training is usually provided for occupations.



Pilot Project for low skilled occupations NOC Level C&D - Requirements

To Qualify for the program you must be prepared to;

- demonstrate on-going efforts to recruit Canadian youth, Aboriginal peoples, recent immigrants, and Canadians in areas of high unemployment
- Show efforts to hire Canadian Citizens through HRSDC and provincial programs
- Engage in Consultations with local labour unions



Pilot Project for low skilled occupations NOC Level C&D – Requirements (Cont.)

- Must Sign employer-employee contract
- Employer must cover recruitment costs
- Employer must assist worker with finding accommodation
- Employer must pay transportation costs
- Employer must provide medical coverage
- Employer must register worker with appropriate provincial workers compensation/workplace safety insurance plans



Expedited Labour Market Opinion

- Accelerates process only available for BC and Alberta based eligible employers
- ELMO Processing within 5 days (As opposed to the current normal 10 days)
- Some occupations in the Tourism Sector qualify



Tourist Occupations that qualify for ELMO

- Food and beverage servers
- Food counter attendants
- Food service supervisors
- Hotel front desk clerks
- Hotel and hospitality room attendants
- Residential cleaning and support workers
- Retail salespersons and sales clerks Ski and snowboard instructors
- Specialized cleaners
- Tour and travel guides



Expedited LMO Applications –Eligible Employers (Alberta and BC Only)

- Employers located in Alberta and British Columbia can apply to HRSDC to be recognized as Qualified Employers.
- Qualified Employers can then obtain ELMO's on an expedited basis in as little as 5 days.



To Qualify as an ELMO Eligible Employer

- Benefit from work performed by foreign worker
- Responsible and supervise on-site work activities and working conditions of FW
- Responsible to pay all wages
- Show occupations are consistent with your principal business activities
- Your company must have operated for a minimum of 12 months and have employed at least 1 worker
- Must be available to respond to Service Canada Officer should HRSDC require more information



Eligible Employers – ELMO (cont.)

- Note that employers applying for Expedited Labour Market Opinions for certain occupations – i.e. Tourism sector – must also meet conditions for Pilot projects for occupations requiring lower levels of formal training – NOC C& D



What happens if I am refused as an Eligible Employer?

- If any of the conditions set out for the employer to meet are not met – application can be refused
- There is no formal appeal process
- Best solution – resubmit application making sure you have resolved any of the outstanding/deficient requirements.



Third Party Representatives

- Not mandatory – Government does not require you to be represented as an employer
- Many employers opt to retain a third party representatives due to the complexity of the law and the process



Third Party Representatives

- Representatives come in different flavors – **Due Diligence is required**
 - **Authorized Representatives pursuant to IRPR** – CSIC Members, Canadian Lawyers and Members of the Quebec Notary Chamber
 - **Provincially regulated employment agents**
 - **Offshore recruiters (Problematic Area)**



Third Party Representatives

- Paid representatives are regulated by the IRPA/IRPR if advising, representing or consulting on an application before the Minister of CIC
- Paid representatives involved in procuring LMO's may or may not be regulated by the Provinces if acting as Employment agents



Why should you consider using Representative

- Complexity of the Law and Process
- Unless you have a Human Resource Capacity in house
- Should be careful in choosing Third Party representative – all are not created equal



Authorized Representatives

- 2003 the Immigration and Refugee protection act was changed.
- In order to represent, consult or represent for a fee on an application before the Minister of Citizenship and Immigration, must be an Authorized Representative
 - Members of CSIC
 - Lawyers who are members of a provincial or territorial Law Society
 - Member of the Chambres de Notaire du Quebec
- Accountable, have competency standards and required to have E&O Insurance and Compensation Funds



Employment Agents

- In most cases Provincially Regulated
- Are prohibited from charging a fee to the Foreign Worker - Supposed to charge Employer
- Can **not** act as an Authorized Representative on a TRV or Work Permit application before the Minister of Citizenship and Immigration



Offshore Recruiters

- Most problematic area for Canadian Employers
- Provincial Legislation is currently changing due to the abuses that have occurred.
- Manitoba has enacted legislation to protect Foreign Workers – Employer sponsored
- Alberta is reworking its Fair Trading Act
- Ontario has just announced that it will be introducing legislation to protect workers
- BC regulates Employment Agents



Sources of Information and Assistance

- Citizenship and Immigration

<http://www.cic.gc.ca>

- Human Resources and Social Development
Canada

<http://www.hrsdc.gc.ca>



Provincial Immigration Websites

- Alberta: www.albertacanada.com
- British Columbia: www.aved.gov.bc.ca
- Manitoba: www.imigratemanitoba.com
- Newfoundland: www.nlppn.ca
- Ontario: www.ontarioimmigration.ca
- Saskatchewan: www.immigration.gov.sk.ca/
- New Brunswick: www.gnb.ca/
- Nova Scotia: www.novascotiaimmigration.com/
- PEI: www.gov.pe.ca/
- Yukon: www.immigration.gov.yk.ca/



Who to Contact

- Vancouver Temporary Foreign Worker Unit Telephone: 604-666-7509 Fax: 604-666-7548 E-mail: TFWU-Vancouver-UTET@cic.gc.ca
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