

Operational Bulletin 316 – July 4, 2011

Assessing Intra-Company Transferees under Specialized Knowledge

Summary

Concerns about consistency in the application of existing guidelines regarding Intra-Company Transferees (ICTs) have prompted Temporary Resident Program Delivery Division of Operational Management and Coordination Branch to provide these instructions on assessment criteria for applications under specialized knowledge.

Issue

The purpose of this Operational Bulletin (OB) is to assist officers at points of entry, inland and at our missions abroad, by providing additional guidance on the assessment criteria for ICTs as it relates to specialized knowledge.

Background

With the cancellation of the national exemption of labour market opinions for software development (IT) workers on September 30, 2010, the Department has observed a significant increase in the number of applications under the *ICT – specialized knowledge* category. Feedback from the border, the field and missions abroad indicates that officers would like to receive further direction on the assessment of ICTs – specialized knowledge applications. Clarification pertaining to the role of salary/wages in assessing specialized knowledge has been flagged as a particular need.

Writing Guidelines

Each ICT application is evaluated on its own merit. When assessing a specialized knowledge worker, officers should consider a number of factors to determine if the application supports the claim of specialized knowledge. These factors include:

- **Education** – is a diploma or degree required for the position sought?
- **Knowledge** – is it relatively unique within the company and industry in that it is not commonly held?
- **Experience** – does the experience with the foreign company/the respective industry support the claim of specialized knowledge?
- **Salary** – is the salary realistic in terms of Canadian wage levels for the occupation concerned?
- **Relevant training** – does any previous training support the claim to specialized knowledge?
- **Supporting documentation** – do the resume, reference letters, etc. support the claim?

It is normally not sufficient for a worker to simply have knowledge of the proprietary tools used or developed by the employer. A specialized knowledge worker would normally possess the following characteristics:

- knowledge that is uncommon (i.e., beyond that generally found in a particular industry and within the company);
- knowledge that has been gained through extensive experience and is difficult to acquire in a short period of time;
- difficulty to train another worker to assume such duties;
- the required knowledge is complex in that it cannot be easily transferred;
- a person possessing such knowledge would be in a position that is critical to the well-being or productivity of the Canadian employer.

Occupation

Officers are instructed to use the National Occupational Classification (NOC) system to evaluate the categorization of the job based on the main duties the foreign worker is expected to perform in Canada. The ICT position in Canada must be of a NOC level that is similar to the applicant's home position or higher, unless the applicant is able to satisfy the visa officer that an exceptional situation exists. In conjunction with the foreign worker's knowledge, education and experience, the NOC will also be used to determine the appropriate wage.

Salary/Wages

As per the Temporary Foreign Worker Guidelines (FW 1) pertaining to ICTs with specialized knowledge, job offers must present salaries that are realistic in terms of Canadian wage-levels for the occupation concerned. Given the extent and uniqueness of such knowledge, we would anticipate that salaries of specialized knowledge workers in Canada should normally approximate the average wage for the stated occupation in the specified geographical location while working in Canada.

Often, applications will present salary calculations that include the use of per diems to supplement wages to justify that a realistic Canadian wage is being paid. This may include allowances for accommodation, meals, transportation, etc. and may be presented in conjunction with a base wage to demonstrate a total remuneration package for the employee. Please note that non-cash per diems (e.g., hotel, transportation paid for by the employer) are not to be included in the calculation of the overall salary. Only allowances compensated in monetary form and paid directly to the employee are to be included.

Salary is one of a series of factors, as indicated above, which must be taken into consideration as a whole in order to render a sound decision. Officers are reminded that applications should not be refused on the basis of salary alone.

For the purpose of assessing salary in relation to specialized knowledge, you may use the following website as a guide: www.labourmarketinformation.ca. This Human Resources and Skills Development Canada website provides you with Canadian wage information for the stated occupation in the specified geographical location.

Officer's Notes

In cases where the proposed wages to be paid to an ICT in Canada raise concerns that applicants do not possess the requisite specialized knowledge, officers should raise these concerns and give applicants an opportunity to address them either through an interview or communication by letter.

If officers are not satisfied that their concerns have been satisfactorily addressed and decide to refuse the application, the Computer-Assisted Immigration Processing System notes should give reasons for the refusal.

Officers are reminded that any notes recorded in relation to the assessment of an applicant under specialized knowledge should be related to the criteria stated in manual chapter FW 1. Notes must be relative to the assessment of specialized knowledge or other factors and demonstrate transparency and a justification/rationale for a refusal.