BUSINESS IMMIGRATION OPTIONS
Creative Work Permit Strategies

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I. INTRODUCTION

Canada's business immigration programs have changed dramatically in the past few years, largely due to an overwhelming increase in demand for passive investor immigration programs. Since 2008, the number of applicants seeking to immigrate to Canada as Investor Immigrants grew from about 3,000 applicants per year to several times that amount. However, processing levels stayed about 3,000 per year, so inventory ramped up. Citizenship and Immigration Canada ("CIC") stopped accepting Investor Immigrant applications in July 2011, and in January 2012, there were 23,464 Investor Immigrants, 2,630 Entrepreneurs, and 2,325 Self Employed cases in inventory.

As at October 5, 2015, there were only 4,347 Investor Immigrants and 134 Entrepreneur immigrants (likely holdovers that haven't been closed yet) as well as 2,003 Self-Employed and 37 Start-Up Visa cases in inventory. It is no small wonder that the 2016 Levels Plan announced in March 2016 only allocated 800 visas for foreign nationals seeking to immigrate through investment in a business ("Business Immigrants"). The small number of visas allocated appears to have less to do with a lack of demand and more to do with a combination of few options available to Business Immigrants and a lack of inventory to be processed.

As federal business immigration options shrunk, the business immigration programs of Provincial Nominee Programs ("PNP") experienced dramatic intakes. For example, the BC PNP's Business Immigrant Program, which had never processed more than 165 applicants prior to 2012, received unprecedented intake levels, and their Business PNP inventory grew to well over 2,000 applicants in the queue by the spring of 2015. Clearly this situation was untenable, and in the course of trying to reduce the backlog, refusal rates for Business PNP cases shot up dramatically.

In this paper, we will examine the objectives and options for Business Immigrants today under the Federal programs.

II. BUSINESS IMMIGRATION UNDER EXPRESS ENTRY

For Business Immigrants who meet the minimum requirements to create an Express Entry ("EE") profile, having a Work Permit issued pursuant to a Labour Market Impact Assessment ("LMIA") can help the Immigrant obtain Permanent Residence within a year. This is extremely attractive, compared to PNPs which can take 3 years or more to achieve the same goal.

Currently, to be eligible to create an EE profile, one must either meet the requirements under the Federal Skilled Worker ("FSW") program or the Canadian Experience Class ("CEC"). However, without an LMIA or a Provincial Nomination to earn 600 points under the Comprehensive Ranking System, the chances of being given an Invitation to Apply is very slim.

Thus, one creative Business Immigration Strategy is:

1. Find a business to purchase;
2. Apply for an LMIA Work Permit;
3. Operate the Business; then
4. Apply for Permanent Residence through the FSW program.

There are a number of variations below, which we will discuss in more detail. However, you will note that this strategy is similar to the business immigration programs under PNPs, in that they require investment and management of the target business in Canada.

III. BUSINESS IMMIGRANT PROFILES

In determining possible options for a Business Immigrant client, it is important to consider what the client's objectives and mindset is. Generally, we have observed that Business Immigrants tend to fall into three types of profiles:

A. "Business First"

These individuals (or often companies) have a specific business in mind which they are interested in investing in, and they need a work permit to be able to manage the business. For many, Permanent Residence is also a goal, but not for all of these people.

B. "Immigration First"

These individuals are primarily interested in obtaining immigration status; investment is a "necessary evil" or a price they need to pay. They are often willing to lose money in order to obtain their permanent residence status, and often even prefer to lose a set amount and have their downside limited rather than risk losing much more.

C. "Immigration and Business"

These individuals are somewhere in the middle. They will often start out as "Immigration First" but with the guidance of good Immigration and Business counsel, be interested in actually making productive investments.

Most of the 23,000 Investor Immigrants who had their cases cancelled in 2014 were likely "Immigration First" applicants. They were willing to either give up 5 years of interest on $800,000, or pay a "One Time Down Payment" of about $200,000. The economic benefit that the Investor Immigrants brought to Canada has long been a subject of intense debate. For example, the South China Morning Post cited a 103 page Federal Government report from 2014 that found that the average annual income tax paid by Investor Immigrants was a miniscule $1,400!

For clients in profile 2 and 3, one of the questions that business immigrants always ask is, "What business can I invest in?" Many clients have friends or relatives who had previously invested into businesses in Canada and lost significant money, leading them to believe that the question is not whether they would lose money, but how much?

As Professional advisors, our role is not necessarily to help Business Immigrants find and assess businesses; however, if we wish to help both the Business Immigrants and Canada's economy prosper in a "win-win" scenario, we can point them in the right direction and suggest that they obtain appropriate Business Consulting advice. I discuss this in my paper "Investing into a Business in Canada, for Fun and Profit!"

IV. WORK PERMITS FOR BUSINESS IMMIGRANTS

The first step to immigration for many Business Immigrants will be obtaining a work permit. In this section, we will look at some of the work permit options to help Business Immigrants come to Canada.

A. Owner/Operator LMIAs

The Owner Operator LMIA is one of the most useful tools for Business Immigrants who can meet the EE requirements. In this section, we will look at the Owner Operator LMIA's from 3 different angles: 1) the Regulatory Requirements; 2) an Owner Operator Policy from April 2011; and 3) Practical Tips based on the experiences from our firm and other lawyers.

1. Regulatory Requirements

Sub-section 203(1) of the Immigration and Refugee Protection Regulations (the "Regulations") provides that work permits may be issued to foreign nationals whose proposed Canadian employer has obtained an opinion from Employment and Social Development Canada ("ESDC") that:

a) the job offer is genuine; and

b) would likely have a neutral or positive effect on the Canadian labour market.

In determining whether a job offer is genuine, the officer is to consider the following factors from section 200(5) of the Regulations:

a) whether the offer is made by an employer that is actively engaged in the business in respect of which the offer is made;

b) whether the offer is consistent with the reasonable employment needs of the employer;

c) whether the terms of the offer are terms that the employer is reasonably able to fulfil; and

d) the past compliance of the employer, or any person who recruited the foreign national for the employer, with the federal or provincial laws that regulate employment, or the recruiting of employees, in the province in which it is intended that the foreign national work.

There are a few things to note regarding the above mentioned regulations:

a) *Startup issues:* It may be difficult for a startup business to qualify, as it would not be "actively engaged in the business". We have successfully done Owner Operator LMIA for a startup, but our clients had invested about $150,000 in leasehold improvements and equipment and was operational before the application assessment was finalized.

b) *Business Purchases:* It would thus be easier to purchase a business rather than start up a new Enterprise, as you could show that the business was "actively engaged" in the business.

c) *Role of the Owner Operator prior to LMIA approval:* An interesting issue arises with respect to the Owner Operator's role. While one may be able to show that the employer company which the Owner Operator wishes to purchase is "actively engaged in the business", is it necessary to show that the proposed Owner Operator is already involved in the business?

d) *Owner Operator's future role:* Applicants would need to show that they are needed in the business. In one application we had, our client's business already had a manager, and the Officer questioned the need for our client to be in Canada. We submitted that the things the Canadian manager could do were limited, and that the business needed to have an Owner Operator to really take overall responsibility.

e) *Ability to afford Owner Operator:* Ensure that the company has sufficient financial resources to be able to hire (and pay) the Owner Operator, especially if there is a salary committed to

f) *Compliance with Employment laws: Ensure* that the business being purchased has been compliant insofar as recruiting and employment laws. This appears to be broader than the "blacklist" by ESDC

g) *LMIA Exempt Work Permits for Startups:* If the client really wished to start a particular business from scratch, it may be better to have him/her obtain a Work Permit as a Free Trade Investor or one of the LMIA Exempt categories first, and then apply for the Owner Operator LMIA after the business has been established and operating.

2. The April 2011 TFWP Owner Operator Guidelines

An ESDC bulletin for the Temporary Foreign Worker Program on Owner Operator Labour Market Opinions was issued April 15, 2011 (the "Bulletin"). As at the time of publication of this paper, this is the most recent available from ESDC, though we have been advised that new guidelines will be published shortly. Here are some comments on issues raised in the Bulletin:

a) *Who is an Owner Operator*: For the purposes of the TFWP, "Owner/Operators" are defined as foreign nationals who hold a share in a business located in Canada and are classified under an NOC 0, A or B occupation. Owner/Operators are not the same as self-employed individuals, and are not required to be hands-on with the day to day operations of the company.

b) *Must an Owner/Operator establish that an LMIA exemption is not available?* Some ESDC Officers have recently taken the position that applicants must prove that there is no LMIA exemption available. This appears to be a misinterpretation of the Bulletin, and is not supported by the Regulations. Here is the excerpt in question:

> *"LMO exemptions are determined by CIC under the authority of Section 205(a) of the IRPR. CIC <u>may</u> [emphasis added] issue a work permit without an LMO, if it is determined that the foreign national would create or maintain significant social, cultural or economic benefits, or job opportunities for Canadians…*
>
> *This exemption usually applies if the owner/operator owns at least 50% of a business. If there are multiple owners, only one owner would be eligible to apply for a work permit under this LMO exemption, unless exceptional circumstances can be demonstrated. Any further work permit applicants require an LMO, including owner/operators who own less than 50% of the business…."*

Nothing in the TFWP Bulletin suggests that one must prove that a LMIA (formerly called a "LMO") exemption is not available. In fact, the TFWP Bulletin notes that:

> *"HRSDC/Service Canada <u>is required</u> to assess all LMO applications. Although an employer-employee relationship is generally required in order to provide an LMO, there are certain situations, such as the owner/operators, where the principal owner would also serve as the worker."* [Emphasis added]

This also reflects section 203(2) of the Regulations, which states that, *"The Department of Employment and Social Development <u>must</u> provide the assessment referred to in subsection (1) on the request of an officer or an employer…"*

c) *What is the test to be met?*: Section 203 of the Regulations sets out the six factors which an officer is to consider in making a determination as to whether or not an offer of employment to a foreign national would have a neutral or positive effect on the Canadian Labour Market.

For O/O LMIAs, the most important test is 203(3)(a) which says:

> **203*(3)*** *An assessment provided by the Department of Employment and Social Development with respect to the matters referred to in paragraph (1)(b) shall, unless the employment of the foreign national is unlikely to have a positive or neutral effect on the labour market in Canada as a result of the application of subsection (1.01), be based on the following factors:*

(a) whether the employment of the foreign national will or is likely to result in direct job creation or job retention for Canadian citizens or permanent residents;" [Emphasis added]

It is not necessary to meet every one of the six factors listed in subsection 203(3). The comments from Justice Zinn in the *Construction and Specialized Workers' Union, Local 1611 v. Canada (Citizenship and Immigration)*, 2013 FC 512 summarize the officer's responsibility, and that he/she must not fetter his/her discretion by adhering slavishly to the ESDC Manuals:

[144] The officer did not fetter his discretion when assessing the LMO application from HD Mining, or make any unreasonable assessment when considering the factors set out in subsection 203(3) of the Regulations. Further, as counsel for the Applicants conceded, it is not necessary that an applicant meet every one of the six factors listed in subsection 203(3), the decision-maker must examine and assess each and then perform a weighing exercise to decide whether the LMO will issue. This is exactly what Officer MacLean did. As he notes in the Bulk Request Assessment and Recommendation form, even if the job creation and skill transfer factors did not weigh in favour of a positive opinion, all of the others did and the LMO would still issue….

ESDC officers must examine <u>all</u> of the evidence put before them, then make a decision as to whether or not issuing the LMIA would have a neutral or positive effect on the Canadian labour market.

d) *Share Ownership*: As per the Bulletin, the holder of the largest share of the business is considered to be the "Principal Owner". Where there are a number of equal shareholders, one of them can be designated as the "Principal Owner". The Bulletin notes that:

The main difference between the Principal Owner and the other Co-Owners is that wages and working conditions need not be assessed for Principal Owners while Co-Owners must have those factors assessed.

e) *No Advertising is required*: This is noted in the "Variations to Minimum Advertising Requirements" on the ESDC website, as well as in the Bulletin.

3. Practical Tips for Owner Operator LMIA Applications

In addition to the above mentioned policy guidelines, the following are some tips which may be of assistance in the preparation of an Owner Operator LMIA application:

a) *Direct ownership vs Holding Companies*: Based on recent guidance from ESDC, the Owner/Operator must own his or her share in the operating business <u>directly.</u> Business Immigrants who own shares in the operating company would not likely qualify.

b) *Licences and Registrations*: Any licences or registrations that may be required to operate the business should be obtained or at least be in process at the time of the application.

c) *Location*: The business location should be identified or at least secured at the time of the application (e.g. a lease for a property). This is particularly important for start-up businesses that may not be in operation at the time of the application. If there are multiple business locations that the applicant will work at, clearly indicate as such in the application;

d) *Forms*: Although ESDC's LMIA application forms were not designed for the Owner Operator LMIA, it is important to complete all fields of the forms. For fields that may not be applicable because of the claim for an Owner Operator LMIA, clearly state that the field is not applicable and, if necessary, explain why the field is not applicable.

e) *Supporting Business Documentation*: Include evidence that the business is able to operate and to hire Canadian citizens or permanent residents. This can include past financial statements, information from websites demonstrating the business' past activities, the inclusion of public information about employees (e.g. employee pages from business websites), pictures of the business, etc.

f) *Job description for the Owner Operator*: While the Bulletin states that Owner/Operators need not be involved in the hands-on operation of their business, it is helpful to prepare the Business Immigrant with explaining what their role in the business will be.

g) *Know the Business*: Ensure that the Business Immigrant is knowledgeable about the business being purchased prior to his or her interview with ESDC.

h) *Median Wages*: Prepare the Business Immigrant for a possible request by ESDC to pay median wages. Some ESDC officers have insisted on seeing median wages paid, even though the Bulletin states this is not necessary for the Principal owner.

i) *Language:* It is worthwhile to note that the Business Immigrants' language ability is not crucial to the success of the LMIA. If the Business Immigrant cannot speak English fluently, ESDC has permitted the use of a translator. Having said that, the Business Immigrant should be prepared to work to improve their English in order comply with the terms of any transition plan or representation that permanent residence will be pursued.

j) *Conditional Purchase of a Business*: Some colleagues who have submitted Owner Operator LMIAs have advised that ESDC has recently begun to question the eligibility of business purchases which are subject to a work permit approval for the Business Immigrant.

   In most of our cases, the Business Immigrant has already purchased an existing business or has already made significant investments into a start-up business. This is understandably a significant commitment for a Business Immigrant to make without the certainty of obtaining a work permit. Most work permit options do require a significant commitment by a Business Immigrant prior to the application process however, so this is not a unique requirement.

k) *Ability of the Owner Operator to perform the work:* Note also that notwithstanding a positive LMIA, Regulation 200(3) states that a Visa Officer shall not issue a Work Permit if there are reasonable grounds to believe that the applicant is unable to perform the work. So if there are

issues to address, such as language or experience, the Business Immigrant must be prepared to address these.

It remains to be seen if ESDC will develop a consistent policy regarding Owner Operator LMIA applications where a Business Immigrant's business purchase is subject to work permit approval for the Business Immigrant. As a matter of speculation, one might consider whether proof of a significant and non-refundable deposit of funds for such a business purchase could be a beneficial factor to an Owner Operator LMIA applicant.

Remember that the ultimate goal in the application is to assist the ESDC officer in understanding the basic concept and operation of the business as possible to demonstrate the genuineness of the business and that the employment of the Owner Operator is likely to have a positive or neutral effect on the Canadian labour market.

B. Other Work Permits

As noted above, to apply for an Owner Operator LMIA, one must establish that the business is genuine, and is actively engaged in business operations. Unless the applicant has purchased an existing business, it could be challenging for a startup business to meet this test.

Thus, we will look at different ways for Business Immigrants to be able to obtain Work Permits to establish businesses in Canada prior to or without applying for an Owner Operator LMIA.

1. North America Free Trade Agreement ("NAFTA") Investors

Pursuant to the NAFTA[1] and sub-section 204(a) of the Regulations, American and Mexican citizens can come to Canada to:

> *"establish, develop, administer or provide advice or key technical services to the operation of an investment to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital, in a capacity that is supervisory, executive or involves essential skills, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry."*

The enterprise itself must have American or Mexican nationality, in that the majority of the shares of the enterprise must be owned by American or Mexican citizens who are not Canadian permanent residents.

Neither NAFTA nor the IRPR define what a "substantial" investment means but the Temporary Foreign Worker Manual[2] (the "TFW Manual") interprets "substantiality" using a "proportionality test". This test measures investment amount against the total cost needed to establish a business. For example, if an American was to invest into a consulting business, it may be found that an investment of $50,000 was necessary, so the American would be expected to invest the bulk of this.

[1] see Section B of annex 1603 in Part 5, Chapter 16 of NAFTA

[2] http://www.cic.gc.ca/english/resources/tools/temp/work/index.asp; see also past PDF versions of the TFW Manual

We have used the NAFTA Investor category to assist American and Mexican nationals in obtaining work permits with investments as little as $50,000, and as much as $200 million. The first work permit is generally issued for a term of one year only, but can usually be renewed for two year terms. This has allowed sufficient time for these Business Immigrants to process their permanent resident applications.

The NAFTA Investor category contemplates the Startup situation, which can make it useful to establish and operate the business prior to making an Owner Operator LMIA application.

We generally prepare the NAFTA Trader/Investor Application Form IMM 5321 along with a Work Permit application and supporting documentation. This form was from June 2002, and does not appear to be on the CIC Website, so we have included this in the Appendix. While we find it a bit clumsy to use, it is the only NAFTA Investor specific form available, and it is probably not necessary if you can provide supporting documentation to address the issues raised in the TFW Manual.

2. Intra-Company Transferees ("ICTs")

The Intra Company Transferee policy was created to permit international companies to temporarily transfer qualified employees to Canada for the purpose of improving management effectiveness, expanding Canadian exports, and enhancing the competitiveness of Canadian entities in overseas markets. This policy is developed pursuant to subsection 205(a) of the IRPR, but is also found in other Free Trade Agreements which Canada has, including NAFTA, Korea, Chile, Peru, Columbia and Panama.

Foreign companies that are establishing or purchasing a subsidiary, branch or affiliate enterprise in Canada may transfer employees in an executive, senior managerial or specialized knowledge capacity to work in the Canadian enterprise. An "Affiliate" relationship is where the transferring company and the Canadian transferee company are both controlled by the same entity or group.

The employee must have worked full time for the foreign company for at least one year in the 3 year period immediately preceding the application. Employees seeking to enter as ICTs in the "specialized knowledge" capacity must provide proof of their possession of such knowledge and why it is specialized.

The ICT provisions specifically contemplate their use in Startup situations, and have much fewer requirements than an Owner Operator LMIA. Thus, these also can be a useful stepping stone for an Owner Operator LMIA in the future.

3. Investor and ICT provisions under other Free Trade Agreements

Under sub-section 204(a) of the IRPR, free trade agreements ("FTAs") between Canada and other countries may provide options for investors and ICT's from those countries. Currently, the only Canadian FTAs which contain investor provisions are with Chile, Colombia, Korea, Panama and Peru[3] which are modeled after the NAFTA.

The Trans-Pacific Partnership ("TPP"), much discussed in the news, is a FTA that was been signed by 12 Pacific Rim countries on February 4, 2016 but is not yet in force. It is an expansion of the Trans-Pacific Strategic Economic Partnership Agreement signed in 2005 by Brunei, Chile, New Zealand and Singapore.

[3] http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/fta-ale.aspx?lang=eng

The 8 additional members include: Australia, Canada, Japan, Malaysia, Mexico, the USA, Peru and Vietnam.

The TPP must be ratified by at least 6 member nations holding a GDP of at least 85% of all signatories. The TPP is not yet in force but drafts already include provisions for investor provisions. We have included a copy of the draft TPP Investor provisions in the Appendices. Generally speaking however, we expect that the TPP will have provisions akin to the NAFTA and other FTAs which may provide new opportunities for Business Immigrants from the other Member nations.

4. 205(a) – Significant Benefit Work Permits (C10) and Work Permits for Entrepreneurs/Self-Employed Candidates (C11)

Also rare breeds of work permits, these work permits are typically issued for shorter durations.

Significant Benefit work permits are often seen as a last resort, particularly for individuals who have no other choice than to request such a work permit due to circumstances outside of their control. The TFW Manual states that the intent of this work permit is "*to address those situations where the social, cultural or economic benefits to Canada of issuing the work permit are so clear and compelling that the importance of the LMIA can be overcome.*"

Entrepreneur/Self-Employed candidate C11 work permits were initially designed to permit work permits for candidates under the Self-Employed and defunct Entrepreneur permanent residence programs. The TFW Manual emphasizes a balance between temporary intent to work in Canada as well as demonstration of long term positive benefits to the Canadian economy.

5. International Experience Class – Working Holiday Program ("WHP")

The WHP is a popular work permit program that has received extra attention in the news recently as greater attention has been placed on temporary foreign workers in Canada. Authority for the program is derived from sub-section 205(b) of the IRPR to support youth mobility. The WHP enables foreign nationals to obtain open work permits which would permit the ownership and operation of a business in Canada. While most countries only are allowed one year WHP, citizens of Australia, the UK, and New Zealand are granted Work Permits for up to 2 years, which should be sufficient time to establish a business in Canada.

6. Spousal Open Work Permit

If a Business Immigrant has a spouse or common law partner ("CLP") that either has a Study Permit or a Work Permit in a high skilled occupation, he or she may be eligible for an open spousal work permit. If Business Immigrant's spouse or CLP is enrolled in a four year degree program, the Business Immigrant can generally obtain an open spousal work permit for the same duration. While the open spousal work permit is generally for people who wish to seek employment, we have also used this for Business Immigrants to start their own businesses.

The spousal open work permit program falls under the public policy, competitiveness and economy section which is governed by 205(c)(ii) of the Regulations.

V. PATHWAYS TO PERMANENT RESIDENCE

After a Business Immigrant has come to Canada with a Work Permit, the next step is to move them through an immigration pathway to obtain Permanent Residence. Since most of the work permits will only confer work status for a period of one to three years however, it is critical to link the work permit to a permanent residence option as soon as possible.

The primary federal immigration pathway for Business Immigrants is the Federal Skilled Worker program which is now managed by CIC through EE.

A. Federal Skilled Workers ("FSW")

To be eligible to apply under the FSW program, Business Immigrants must have 1 year of full time, high skilled experience within the past 10 years. Business Immigrants must also achieve a minimum language assessment of CLB 7 at least in one of English or French. Lastly, Business Immigrants must attain a minimum of 67 out of 100 points based on 6 criteria including language skills, age, adaptability, education, years of work experience and whether they have "Arranged Employment".

"Arranged Employment" is defined in IRPR Regulation 82. Technically speaking, this encompasses:

a) 82(2)(a): People with LMIA based work permits, including Owner/Operator LMIA's;

b) 82(2)(b): People with work permits issued pursuant to NAFTA or other FTAs; and

c) 82(2)(d): People with a LMIA and a work permit that would not otherwise qualify.

FSW permits self-employment based experience, making it particularly useful for Business Immigrants.

Drawbacks to the FSW program for Business Immigrants include issues relating to language and education. Business Immigrants from countries like China often have significant difficulties with the language requirements. In addition, education credential assessments ("ECAs") can also present serious challenges for individuals with credentials from little known schools or which were completed many years ago.

EE has also introduced additional drawbacks. As NAFTA and other FTA work permits are issued pursuant to section 204(a) of the Regulations, Business Immigrants with these work permits should receive points for "Arranged Employment". EE does not recognize these types of work permits for "Arranged Employment" however. Currently, only individuals with a LMIA or a LMIA-based work permit will receive points for Arranged Employment. As such, applicants who would otherwise meet the eligibility criteria for the FSW program with FTA-based work permits are excluded under EE.

B. Canadian Experience Class ("CEC")

Business Immigrants who have worked full-time in Canada in a high skilled occupation such as business owner or manager for at least 52 weeks in the past 3 years may be eligible to apply to immigrate under CEC. As with the FSW program, the Business Immigrants must also achieve a minimum language score which will generally be CLB 7 for occupations relevant to Business Immigrants.

An important qualification for CEC is that Canadian work experience while self-employed person does not count, pursuant to sub-section 87.1(3)(b) of the Regulations. Business Immigrants who obtained their work experience under an ICT-based or WHP-based work permit, and those who do not own or control the Canadian enterprise, may qualify however.

C. Self Employed

The Self Employed immigration program is limited to individuals who have sufficient self-employment experience in the following specific areas:

a) taken part in cultural activities or athletics at a world-class level;

b) been self-employed in cultural activities or athletics; or

c) experience in managing a farm.

Business Immigrants who are eligible for this program can currently apply directly for permanent residence.

VI. POSSIBLE FUTURE OPTIONS

With the ever changing field of immigration law, the above options and pathways to permanent residence are only currently as at March 2016. The current government has promised changes to regulations and policy that will likely result in the need to include new considerations in the coming months. Minister of Immigration, Refugees and Citizenship, the honorable John McCallum, has placed greater emphasis on streamlining immigration pathways for family class applicants, international students and refugees. As such, the current government's desire to develop possible options for Business Immigrants is uncertain.

Despite this uncertainty, among the possible changes to Canadian immigration law is an immigration program specific to Business Immigrants which the Canadian Bar Association and myself have been advocating for, that being the creation of a Canadian Business Experience Class ("CBEC").

A. The Canadian Business Experience Class

At its heart, the CBEC is intended to assist the immigration of Business Immigrants who have proven experience operating a business in Canada which creates or maintains employment. The currently suggested parameters are for the applicant to prove the establishment or maintenance of at least three (3) full time equivalent jobs (30 hours per week) for Canadians for two of the three years preceding their application. "Traditional" assessment factors such as education, language, net worth, investment and other work experience would not be as relevant.

If implemented, the CBEC would differ from prior entrepreneur programs such as the Entrepreneur and Self-Employed programs, by providing having a wider scope of eligible activities (unlike the Self-Employed program) and without the need to commit resource to monitoring (unlike the Entrepreneur program).

I had the opportunity to speak with Minister John McCallum and his staff at a breakfast on March 18, 2016 regarding the CBEC. While there are no updates yet, we will keep monitoring this!

VII. FINAL WORDS

Leadership Guru John Maxwell once said: *"Policies are many; Principles are few. Policies will change; but Principles never do."* In this paper, I've tried to equip you with different Work Permit policies and strategies so you can assist your Business Immigrant clients to come to Canada, establish businesses, or buy businesses from retiring Canadians, and hopefully prosper, making Canada a better place.

One of the life principles that my late father passed on to me is this: *"I shall be in this world but once. Any good therefore, that I can do, or any kindness that I can show to any fellow creature, let me do it now. Let me not defer nor neglect it, for I shall not pass this way again."*

In the past, we've had Federal Investor and Entrepreneur programs. The current Policies of the day are the Owner Operator LMIA's and Business PNP Programs. Next year, it may be the Canadian Business Experience Class. The only thing constant is change!

I come from a business and real estate law background, and have a degree in commerce as well as law. I've practiced law in British Columbia for over thirty years, the twenty five of which have been focused primarily on immigration law. I could practice, and have practiced, in several other areas of law, some of which might be more lucrative or challenging; however, I have found that immigration law is immensely fulfilling in all respects.

At Lowe & Company, we tell the story of a man who passed by a construction site and saw three bricklayers. He asked the first one, "What are you doing?" The man replied, "Can't you see? I'm laying bricks!" The man asked the second man the same question; the second man replied, "I'm earning a living for my wife and family." Finally, the man asked the third man what he was doing. The third man proudly proclaimed, "I'm building a cathedral!"

We know that immigrating to Canada is one of the most important, and stressful, events of each client's life. The way that we all perform our work has a great effect on our clients' lives. Of course we all must do our jobs; and we all must earn a living; however, from the junior receptionist to the senior lawyers in our firm, we realize that what we do, and the way that we do it, plays a significant part in building the "cathedral" in our clients' lives. And therein lies the source of fulfillment and satisfaction in what we do.

There will always be unscrupulous sorts, whether lawyers or not, who will offer all sorts of promises to potential clients that you cannot, or should not, match. Don't stoop to the lowest common denominator; your integrity is worth more than that. Before I changed my practice focus to immigration law, I asked a missionary friend from Hong Kong what he thought, and told him I was concerned about the reputation of "slimy immigration consultants" and being tarred with the same brush. My friend wisely said, "That's EXACTLY why we need good immigration lawyers, who can give professional, competent advice, to potential migrants with honesty and integrity."

I believe that a profit is a byproduct of doing something well. It is not the end in itself; however, if you focus on building the "cathedrals" in people's lives, with honesty, competence, and genuine care for your clients, you can not only earn a decent living, but have a fulfilling life. And that is worth more than great riches!

APPENDIX I – Immigration and Refugee Protection Regulations 200(3), 200(5), 203(1), 203(2) and 203(3) – Relevant Excerpts, Emphasis added

Exceptions

200 (3) An officer shall not issue a work permit to a foreign national if

> **(a)** there are reasonable grounds to believe that the foreign national is unable to perform the work sought;

Genuineness of job offer

200 (5*) A determination of whether an offer of employment is genuine shall be based on the following factors:*

> **(a*) whether the offer is made by an employer that is actively engaged in the business in respect of which the offer is made***, unless the offer is made for employment as a live-in caregiver;
>
> **(b) *whether the offer is consistent with the reasonable employment needs of the employer***;
>
> ***(c) whether the terms of the offer are terms that the employer is reasonably able to fulfil***; and
>
> **(d)** the past compliance of the employer, or any person who recruited the foreign national for the employer, with the federal or provincial laws that regulate employment, or the recruiting of employees, in the province in which it is intended that the foreign national work.

Assessment of employment offered

203 (1) On application under Division 2 for a work permit made by a foreign national other than a foreign national referred to in subparagraphs 200(1)(c)(i) to (ii.1), an officer must determine, on the basis of an assessment provided by the Department of Employment and Social Development, of any information provided on the officer's request by the employer making the offer and of any other relevant information, if

> ***(a) the job offer is genuine under subsection 200(5);***
>
> ***(b) the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada…***

Assessment on request

203(2) *The Department of Employment and Social Development* ***must*** *provide the assessment* referred to in subsection (1) on the request of an officer or an employer or group of employers, none of whom is an employer who

(a) on a regular basis, offers striptease, erotic dance, escort services or erotic massages; or

(b) is referred to in any of subparagraphs 200(3)(h)(i) to (iii).

Factors — effect on labour market

(3) *An assessment provided by the Department of Employment and Social Development with respect to the matters referred to in paragraph (1)(b) shall,* unless the employment of the foreign national is unlikely to have a positive or neutral effect on the labour market in Canada as a result of the application of subsection (1.01), *be based on the following factors:*

(a) whether the employment of the foreign national will or 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 will or is likely to result in the development 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;

(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 will hire or train Canadian citizens or permanent residents or has made, or has agreed to make, reasonable efforts to do so;

(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; and

(g) whether the employer has fulfilled or has made reasonable efforts to fulfill any commitments made, in the context of any assessment that was previously provided under subsection (2), with respect to the matters referred to in paragraphs (a), (b) and (e).

Temporary Foreign Worker Program Bulletin

Date: 2011-04-15

To: All TFWP Staff (Managers, Consultants, Officers, etc.)

From: Andrew Kenyon, Director General, Temporary Foreign Workers and Labour Market Information Directorate, NHQ

Subject: Clarification on Labour Market Opinions for Owner/Operators of a Business

Purpose:

The purpose of this Bulletin is to provide guidance in addressing situations where a temporary foreign worker (TFW) is an owner/operator of a business and is applying at Human Resources and Skills Development Canada (HRSDC)/Service Canada for a Labour Market Opinion (LMO).

Authority:

The Temporary Foreign Worker Program (TFWP) operates under the authority of the *Immigration and Refugee Protection Act (IRPA)* and the *Immigration and Refugee Protection Regulations (IRPR)*.

The *IRPR* prescribes the factors that HRSDC/Service Canada is to consider in forming an opinion on the labour market impact of hiring a foreign national. Section 203 of the *IRPR* outlines the authorities of HRSDC/Service Canada:

203. (1) On application under Division 2 for a work permit made by a foreign national other than a foreign national referred to in subparagraphs 200(1)(c)(i) to (ii.1), an officer shall determine, on the basis of an opinion provided by the Department of Human Resources and Skills Development, if:

(*a*) the job offer is genuine under subsection 200(5);

[200 (5) A determination of whether an offer of employment is genuine shall be based on the following factors:

(a) whether the offer is made by an employer, other than an employer of a live-in caregiver, that is actively engaged in the business in respect of which the offer is made;

(b) whether the offer is consistent with the reasonable employment needs of the employer;

(c) whether the terms of the offer are terms that the employer is reasonably able to fulfil; and

(d) the past compliance of the employer, or any person who recruited the foreign national for the employer, with the federal or provincial laws that regulate employment, or the recruiting of employees, in the province in which it is intended that the foreign national work.]

(*b*) the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada;

[203(3) An opinion provided by the Department of Human Resources and Skills Development with respect to the matters referred to in subsection (1)(b) 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;

(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.]

(c) the issuance of a work permit would not be inconsistent with the terms of any federal-provincial agreement that apply to the employers of foreign nationals;

(d) in the case of a foreign national who seeks to enter Canada as a live-in caregiver,
(i) the foreign national will reside in a private household in Canada and provide child care, senior home support care or care of a disabled person in that household without supervision,
(ii) the employer will provide adequate furnished and private accommodations in the household, and
(iii) the employer has sufficient financial resources to pay the foreign national the wages that are offered to the foreign national; and

(e) during the period beginning two years before the day on which the request for an opinion under subsection (2) is received by the Department of Human Resources and Skills Development and ending on the day that the application for the work permit is received by the Department,
(i) the employer making the offer provided each foreign national employed by the employer with wages, working conditions and employment in an occupation that were substantially the same as the wages, working conditions and occupation set out in the employer's offer of employment, or
(ii) in the case where the employer did not provide wages, working conditions or employment in an occupation that were substantially the same as those offered, the failure to do so was justified in accordance with subsection (1.1).

Sections 200 and 205 of the *IRPR* outline factors for Citizenship and Immigration Canada (CIC) to consider, when determining whether to issue a work permit without an LMO:

200. (1) Subject to subsections (2) and (3), an officer shall issue a work permit to a foreign national if, following an examination, it is established that

(a) the foreign national applied for it in accordance with Division 2;

(b) the foreign national will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;

(c) the foreign national
(i) is described in section 206, 207 or 208,
(ii) intends to perform work described in section 204 or 205, or
(iii) has been offered employment and an officer has determined under section 203 that the offer is genuine and that the employment is likely to result in a neutral or positive effect on the labour market in Canada; and

(d) [Repealed, SOR/2004-167, s. 56]

(e) the requirements of section 30 are met.

205. A work permit may be issued under section 200 to a foreign national who intends to perform work that

(a) would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents.

Background:

For the purpose of the TFWP, owner/operators are defined as foreign nationals who hold a share in a business located in Canada, and are classified under a NOC 0, A or B occupation. Please note that a business owner/operator is not the same as a self-employed individual, since a business owner/operator is not required to be hands-on with the day-to-day operations of the company.

All owner/operators must apply to HRSDC/Service Canada for an LMO, except for those who are determined to be exempt by CIC.

LMO exemptions are determined by CIC under the authority of Section 205*(a)* of the *IRPR*. CIC **may** issue a work permit without an LMO, if it is determined that the foreign national would create or maintain significant social, cultural or economic benefits, or job opportunities for Canadian citizens or permanent residents. Examples of "significant benefits" include: general economic stimulus (such as job creation, development in a regional or remote setting, or expansion of export markets for Canadian products and services), and advancement of Canadian industry (such as technological development, product or service innovation or differentiation, or opportunities for improving the skills of Canadian citizens or permanent residents).

This exemption usually applies if the owner/operator owns at least 50% of a business. If there are multiple owners, only one owner would be eligible to apply for a work permit under this LMO exemption, unless exceptional circumstances can be demonstrated. Any further work permit applicants require an LMO, including owner/operators who own less than 50% of the business.

Please note that simply by owning shares in a business, does not mean that the owner/operators will meet the LMO exemption requirements. If CIC determines the applicant does not qualify for an exemption, the owner/operator will be required to apply for an LMO at HRSDC/Service Canada before applying for a work permit at CIC.

Guidelines:

HRSDC/Service Canada is required to assess all LMO applications. Although an employer-employee relationship is generally required in order to provide an LMO, there are certain situations, such as the owner/operators, where the principal owner would also serve as the worker.

Multiple Owners:
In cases where there are multiple owners, the principal owner must be designated as the "employer".

1) Principal Owner (Employer)

The principal owner is the person who has the largest share in the business or, in the case of multiple owners of equal shares, it is the person designated as "the employer" for the purpose of applying for an LMO.

The principal owner **may** be eligible for an LMO exemption. To check if they qualify for an LMO exemption, the principal owner must contact a Temporary Foreign Worker Unit at CIC. If CIC determines the applicant does not qualify for an exemption, the owner/operator will be required to apply for an LMO at HRSDC/Service Canada before applying for a work permit at CIC.

a) LMO standard application:
When applying for an LMO for themselves, principal owners should submit the standard application for an LMO to HRSDC/Service Canada.

b) Neutral LMO:
HRSDC/Service Canada will assess the LMO application for a neutral effect on the Canadian labour market.

c) Assessment emphasis:
For the purposes of this assessment, more emphasis should be placed on labour market factors such as job retention and job creation.

d) Other factors:
Certain labour market factors will not be assessed for the principal owner, such as the wages, working conditions or recruitment efforts. See the variations to minimum advertising requirements, exempting owner/operators from submitting proof of recruitment efforts.

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2) Principle Owner (Employer) applies for co-owners as "workers"

In cases where there are multiple owners of a business, the principal owner (e.g. the largest shareholder or the equal shareholder who has been designated as the "employer") must act as the "employer" and apply for LMOs to HRSDC/Service Canada for the other co-owners as "workers"..

a) LMO standard application:
When applying for LMOs to HRSDC/Service Canada for the co-owners, the principal owner should submit the standard application.

b) Neutral LMO:
HRSDC/Service Canada will assess the LMO application for a neutral effect on the Canadian labour market.

c) Assessment emphasis:
For the purposes of this assessment, more emphasis should be placed on labour market factors such as job retention and job creation.

d) Wages and working conditions should be assessed for the co-owners but recruitment efforts should be waived for LMO applications. See variations to minimum advertising requirements exempting owner/operators from submitting proof of recruitment efforts.

*3) Owner/Operator hiring temporary foreign workers who are **not** co-owners*

Owner/operators looking to hire foreign nationals as employees for their business in Canada must apply for an LMO for each employee. They must submit the standard application for an LMO to HRSDC/Service Canada and meet all of the usual LMO requirements.

Considerations:

1) In the case of equal shareholders, where one person is designated as the "employer", another shareholder can assume this role in subsequent LMO applications.
2) Businesses can be completely foreign-owned as long as the work takes place in Canada.
3) Owner/operators are restricted to NOC 0, A and B occupations.

Other Related Directives:

Employers interested in hiring self-employed foreign nationals.

Key Information:

Approved by: Andrew Kenyon, DG
Division: Policy and Program Design
Althea Williams, Director
Jena Cameron, Manager
NC-TFWP_PTET-INBOX-GD

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APPENDIX III – OWNER/OPERATOR VARIATION TO THE MINIMUM ADVERTISING REQUIREMENTS EXCERPT FROM ESDC WEBSITE

)wners/Operators (all provinces)

The owner/operator must demonstrate that he is integral to the day-to-day operation of the business and will be actively involved in business processes/service delivery in Canada. In such instances, greater consideration should be given to demonstration by the applicant (owner/operator) that such temporary entry will result in the creation or retention of employment opportunities for Canadians and permanent residents and/or skills transfer to Canadians and permanent residents.

- **Variation:** No advertising or recruitment is required.
- **Applicability:** All provinces

Traders and investors

An applicant can be granted trader or investor status, but not both. If an applicant is unsure as to the applicable status or wishes to be considered under both, all sections of the application form must be completed. (Refer to sections 5.2 and 6.2 for information concerning the application form.)

5 Traders

6 Investors

▾ 6.1 What requirements apply to investors?

The following requirements apply:

- applicant has American or Mexican citizenship;
- enterprise has American or Mexican nationality;
- substantial investment has been made, or is actively being made;
- applicant is seeking entry solely to develop and direct the enterprise;
- if the applicant is an employee, position is executive or supervisory or involves essential skills; and
- compliance with existing immigration measures applicable to temporary entry.

▾ 6.2 Where can an investor apply for a work permit?

An application should be submitted at a visa office.

The Regulations allow a citizen of the U.S. to apply for a work permit either at a POE (R198) or at a visa office. However, due to the complexity of the application and for reasons of client service, program consistency and reciprocity, an application for a work permit as an investor should be submitted at a visa office. Because of reciprocal treatment for Canadians, U.S. and Mexican citizens who are granted temporary resident status can also apply for investor status from within Canada (R199).

A person who wishes to submit an application at a POE is to be counselled to submit the application at a visa office. Upon receiving a request for extension, the file from the issuing office should be requested to compare the original information and documentation with that presented in support of the extension request.

Persons applying for investor status must complete an *Application for Trader/Investor status* [IMM 5321] in addition to the application for an employment authorization.

▼ 6.3 What criteria must be met?

- The applicant is a citizen of the U.S. or Mexico and the enterprise or firm to which the applicant is coming has American or Mexican nationality.

  > **Note:** American or Mexican nationality means that the individual or corporate persons who own at least 50 percent interest (directly or by stock) in the entity established in Canada must hold American or Mexican citizenship. Joint ventures and partnerships are limited to two parties.

  In parent-subsidiary situations, officers should consider the nationality of the corporate entity established in Canada.
  A letter attesting to ownership from a corporate secretary or a company lawyer may be used in determining nationality.
  The place of incorporation of an enterprise is not an indicator of nationality. Nationality is indicated by ownership.
- The applicant is seeking temporary entry solely to develop and direct the operations of an enterprise in which the applicant has invested, or is actively in the process of investing, a substantial amount of capital.

  > **Note:** This criterion does not apply to an employee of an investor.

  "Develop and direct" means that the applicant should have controlling interest in the enterprise. An interest of 50 per cent or less usually will mean that the applicant does not have requisite control, particularly in smaller enterprises. An equal share of the investment, such as an equal partnership, generally does not give controlling investment in Canadian-based corporations.

However, in cases of American and Mexican corporate investment in Canadian-based corporations, the focus should be less on an arithmetical formula and more on corporate practice, since control of half or less of the stock sometimes gives effective control. A joint venture may also meet the "develop and direct" requirement, provided that the American or Mexican corporation can demonstrate that it has, in effect, operational control.

Investment involves placing funds or other capital assets at risk in the commercial sense in the hope of generating a profit or a return on the funds risked. If the funds are not

subject to partial or total loss if investment fortunes reverse, then it is not an investment which can be used to support investor status. (Investor status could not, therefore, be extended to non-profit organizations).

If the applicant is in the process of investing, mere intent to invest or prospective investment arrangements entailing no present commitment will not suffice. The applicant must be close to the start of actual business operations, not merely in the stage of signing contracts (which may be broken) or scouting for suitable locations and property. The investment funds must be irrevocably committed to the business.

Whether an investment has been, or will be made, the applicant must demonstrate prior or present possession and control of the funds or other capital assets.

Officers should assess the nature of the transaction to determine whether a particular financial arrangement may be considered an investment for the purpose of investor status. Following are some factors which may be considered in making a determination:

- Funds: Mere possession of uncommitted funds in a bank account would not qualify, whereas, a reasonable amount of cash held in what is clearly a business bank account or similar fund used for routine business operations may be counted as investment funds.
- Indebtedness: Mortgage debt or commercial loans secured by the enterprise's assets cannot count toward the investment as there is no requisite element of risk. Loans secured by the applicant's own personal assets, such as a second mortgage on a home, or unsecured loans, such as a loan on the applicant's personal signature, may be included since the applicant risks the funds in the event of business failure.
- Lease/rent payments: Payments in the form of leases or rents for property or equipment may be calculated toward the investment in an amount limited to the funds devoted to that item in any one month. However, the market value of the leased equipment is not representative of the investment and neither is the annual rental cost (unless it has been paid in advance) as these rents are generally paid from the current earnings of the business.
- Goods/equipment as investment: The amount spent for purchase of equipment and for inventory on hand may be calculated in the investment total. The value of goods or equipment transferred to Canada (such as factory machinery shipped to Canada to start or enlarge a plant) is considered an investment provided the applicant can demonstrate that the goods or machinery will be put, or are being put, to use in an ongoing commercial enterprise.

There is no minimum dollar figure established for meeting the requirement of "substantial" investment. Substantiality is normally determined by using a

"proportionality test" in which the amount invested is weighed against one of the following factors:

- the total value of the particular enterprise in question (determining proportion is a largely straightforward calculation involving the weighing of evidence of the actual value of an established business, i.e., purchase price or tax valuation, against the evidence of the amount invested by the applicant); or
- the amount normally considered necessary to establish a viable enterprise of the nature contemplated. (This may be a less straightforward calculation. Officers will have to base the decision on reliable information on the Canadian business scene to determine whether the amount of the intended investment is reasonable for the type of business involved. Letters from chambers of commerce or statistics from trade associations may be reliable for this purpose.)

Only the amount already invested or irrevocably committed for investment can be considered in determining substantiality.

The investment must be significantly proportional to the total investment. The total investment is the cost of an established business or money needed to establish a business. In businesses requiring smaller amounts of total investment, the investor must contribute a very high percentage of the total investment, whereas in businesses of larger total investment, the percentage of the investment may be much less. In applying the test, officers must first focus on the nature of the business to determine reasonably the total amount of investment needed to establish such business.

Clearly, the total amount of money needed to start a consulting service will be much less than to open an automobile manufacturing plant or even a restaurant. In the case of a consulting firm, it might be found that a total of $50,000 investment is necessary to become fully operational. In order to qualify as an investor, an applicant would have to invest a high percentage of the $50,000. For a total investment of $1 million, the investor might reasonably have to invest at least $500,000 to $600,000; whereas for a $10 million manufacturing plant, $2-3 million might suffice, based on the sheer magnitude of the dollar amount invested. (These examples are not intended to establish any set dollar figures, but are used only to demonstrate by example the application of the proportionality test.)

The enterprise must be a real and active commercial or entrepreneurial undertaking which operates to produce some service or commodity for profit. It cannot be a paper organization or an idle, speculative investment held for potential appreciation in value. For instance, passive investment in developed or undeveloped real estate or stocks does not qualify. (Evidence that an applicant intends and has the ability to invest additional funds in the future in an enterprise may demonstrate that the business is, or

will be, a viable commercial enterprise. A plan for future investment, expansion, and/or development is significant in meeting this criterion.)

The objective of investor status is to promote productive investment in Canada. Therefore, an applicant is not entitled to this status if the investment, even if substantial, will return only enough income to provide a living for the applicant and family.

There are various ways to assist in determining whether an enterprise is marginal, in the sense of only providing a livelihood for the applicant. For instance, an applicant may show that the investment will expand job opportunities locally or that it is adequate to ensure that the applicant's primary function will not be that of a skilled or unskilled labourer. If the applicant has substantial income from other sources and does not rely on the investment enterprise to provide a living, the investment may be one of risk and not one of providing a mere livelihood. Therefore, the investment would not be in the marginal category.

▼ 6.4 What criteria must be met to qualify to bring an employee to Canada in investor status?

Criteria applicable to the employer

To bring an employee to Canada in investor status, the nationality requirement must be met:

- the prospective employer in Canada must be a citizen of the U.S. or Mexico who is maintaining investor status in Canada; or
- if the prospective employer is a corporation or other business organization, the majority ownership must be held by citizens of the U.S. or Mexico who, if not residing in the U.S. or Mexico, are maintaining investor status in Canada.

A citizen of the U.S. or Mexico who is a permanent resident of Canada does not qualify to bring an employee into Canada under investor status.

Shares of a corporation or other business organization owned by a citizen of the U.S. or Mexico who is a permanent resident of Canada cannot be considered in determining majority ownership to qualify the company for bringing in an employee as an investor.

Criteria applicable to the employee

The applicant must be an American or Mexican citizen who qualifies in a supervisory or executive capacity or possesses skills essential to the firm's operations in Canada.

The supervisory or executive element of the position is a primary function. The supervisor is primarily responsible for directing, controlling and guiding subordinate employees and does not routinely engage in hands-on activities. (A first line supervisor would not, as a general rule, qualify). An executive or manager is in a position in the organization with significant policy authority.

Indicators of supervisory or executive or managerial capacity are:

- position title;
- place in the organizational structure;
- job duties;
- degree of ultimate control and responsibility over operations
- number and skill levels of immediately subordinate employees over whom supervision is exercised;
- level of pay; and
- qualifying executive or supervisory experience.

The size of the Canadian office will dictate which indicators are more relevant.

Essential skills or services are special qualifications that are vital to the effectiveness of the firm's Canadian operations over and above qualifications required of an ordinary skilled worker.

An employee with essential skills is not required to have previously worked for the enterprise unless the skills required could only be acquired by working for the enterprise.

Officers must be satisfied that, based upon a consideration of the following factors, investor status is warranted:

- the degree of proven expertise of the applicant in the area of specialization;
- the uniqueness of the special skills;
- the length of experience and training with the firm;
- the period of training required to perform the contemplated duties; and
- the salary that the special expertise can command.

There are two exceptions to the application of the factors concerning essential skills:

New enterprises

- investor status may be granted to an employee not possessing essential skills when the employee is needed for the start-up of a new enterprise;
- the employee and the company will have to demonstrate need, based upon familiarity with the American or Mexican operations of the firm;

- this provision usually applies where a firm established in the U.S. or Mexico seeks to use a skilled American or Mexican employee in the early stages of a Canadian investment;
- investor status will normally be granted for a period not to exceed one year;
- this procedure is designed to assist new enterprises to establish themselves and to allow them a reasonable period of time to train a Canadian for a position not requiring essential skills.

Highly trained technicians

- a highly trained or specially qualified technician employed by a firm to train or supervise personnel employed in manufacturing, maintenance and repair functions may be granted investor status even though some manual duties may be performed, provided that the firm cannot obtain the services of a qualified Canadian technician;
- the emphasis is on "highly trained". For example, a qualified technician coming to perform warranty repairs on intricate and complex products sold in trade between Canada and the U.S./Mexico can be granted investor status if the employing firm establishes that it cannot obtain the services of a qualified Canadian technician. It is expected that the firm in Canada will, within a reasonable period of time, locate and train a Canadian as a highly skilled technician.

The absence of an effective training program for a Canadian is sufficient reason to refuse repeated requests for an American or a Mexican worker to occupy a position requiring high technical skills.

▼ 6.5 What documents are issued?

Persons qualifying in the Investor category may be issued a work permit pursuant to R204, T22.

▼ 6.6 How long can a work permit be issued and can it be extended?

A work permit issued at the time of entry can have a maximum duration of one year.

Extensions should be granted for a duration of two years provided that the requirements outlined above are met.

An applicant's expression of a definite intention to return to the U.S. or Mexico when investor status terminates will normally be accepted as sufficient evidence of temporary

intent unless there are indications to the contrary.

Investor status would end upon applicant taking another job, engaging in an activity which is not consistent with this status, closing down the business, etc.

North American Free Trade Agreement and university, college and seminary teachers

The immigration provisions of the NAFTA are of particular interest to Canadian, American and Mexican teachers who have been offered temporary appointments at the university, college, and seminary levels. The following is intended to provide information concerning the application of the temporary entry chapter of the NAFTA for university, college and seminary teachers.

Date Modified: 2014-10-28

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Government of Canada activities and initiatives

Budget 2016

Budget 2016 explained (video)

Budget 2016

APPENDIX V – BLANK NAFTA INVESTOR FORM

Citizenship and Immigration Canada | Citoyenneté et Immigration Canada

NORTH AMERICAN FREE TRADE AGREEMENT
APPLICATION FOR TRADER/ INVESTOR STATUS
(WORK PERMIT)

A **TRADER** is a business person under Chapter 16 of the North American Free Trade Agreement (NAFTA) who is seeking temporary entry to Canada to carry on substantial trade in goods or services principally between Canada and the United States/Mexico and who will be employed in a capacity that is supervisory or executive or involves essential skills.

An **INVESTOR** is a business person under Chapter 16 of the NAFTA who is seeking temporary entry into Canada solely to develop and direct the operations of an enterprise in which the business person has invested, or is actively in the process of investing, a substantial amount of capital.

Complete only those sections that apply to the status you are seeking, i.e., Trader or Investor status. If you wish consideration under both, complete the sections applicable to both. Only if you are seeking Trader or Investor status on the basis of being an employee of a qualifying person or enterprise should you complete that section. Please read the entire application and ensure that you complete all parts that pertain to your circumstances.

Please note that a Visa or Immigration Officer must be completely satisfied that all applicable criteria are met before issuing a work permit. It is your obligation to provide sufficient supporting documentation (original documents only) that clearly shows compliance with requirements.

ACCORD DE LIBRE-ÉCHANGE NORD AMÉRICAIN
DEMANDE DE STATUT DE NÉGOCIANT OU D'INVESTISSEUR
(PERMIS DE TRAVAIL)

Un **NÉGOCIANT** est un homme ou une femme d'affaires visé(e) au chapitre 16 de l'ALENA qui demande à entrer temporairement au Canada pour y mener un important commerce de produits ou de services, principalement entre le Canada et les États-Unis ou le Mexique, et qui sera employé(e) en qualité de superviseur ou de directeur ou occupera un poste exigeant des compétences essentielles.

Un **INVESTISSEUR** est un homme ou une femme d'affaires visé(e) au chapitre 16 de l'ALENA qui demande à entrer temporairement au Canada dans le seul but d'y développer et diriger les opérations d'une entreprise dans laquelle il ou elle a investi, ou est activement en train d'investir, une somme importante.

Vous ne devez remplir que les sections qui s'apliquent au statut que vous demandez soit le statut de négociant ou d'investisseur. Si vous désirez qu'on examine votre admissibilité à la fois à l'un ou l'autre titre, veuillez remplir toutes les sections. Seul le demandeur du statut de négociant ou d'investisseur en tant qu'employé d'une personne ou entreprise admissible à ce même statut devrait remplir la section en cause. Veuillez lire le formulaire de demande au complet et prendre soin de remplir toutes les sections qui ont trait à votre cas.

Veuillez noter que l'agent des visas ou l'agent d'immigration, selon le cas, doit être tout à fait convaincu que tous les critères applicables sont respectés avant de vous délivrer un permis de travail. Il vous incombe de présenter les documents nécessaires à l'appui de votre demande (documents originaux seulement) qui établissent clairement qu'il est satisfait aux exigences.

NORTH AMERICAN FREE TRADE AGREEMENT
APPLICATION FOR TRADER/ INVESTOR STATUS (WORK PERMIT)

ACCORD DE LIBRE-ÉCHANGE NORD AMÉRICAIN
DEMANDE DE STATUT DE NÉGOCIANT OU D'INVESTISSEUR (PERMIS DE TRAVAIL)

SECTION A - BASIC INFORMATION (To be completed by all applicants)
SECTION A - RENSEIGNEMENTS DE BASE (Doit être remplie par tous les demandeurs)

Applicant surname - Nom de famille du demandeur	First name - Prénom	Second name - Autre nom
Address - Adresse	Date of birth / Date de naissance ▶ D - J M Y - A	
	Place of birth - Lieu de naissance	
Citizenship - Citoyenneté	Citizenship certificate, birth certificate or passport / Certificat de citoyenneté, certificat de naissance ou passeport ▶	

ACCOMPANYING DEPENDANTS - PERSONNES À CHARGE ACCOMPAGNANT LE DEMANDEUR

Name / Nom	Date of birth / Date de naissance D - J M Y - A	Relationship / Lien de parenté

DETAILS OF ENTERPRISE IN CANADA - DÉTAILS DE L'ENTREPRISE AU CANADA

Name (including operating name) - Nom (précisez le nom commercial)	Date(s) and place(s) of incorporation, registration, licencing or other establishment of the business in Canada / Date(s) et lieu(x) de constitution en société, d'enregistrement, d'obtention de permis ou autre forme d'acte constitutif de l'entreprise au Canada	
Business address - Adresse commerciale	Date(s) D - J M Y - A	Place(s) - Lieu(x)

Describe the trade or business activities of the enterprise
Description du commerce ou des activités commerciales de l'entreprise

SECTION B - COMMON REQUIREMENTS (To be completed by all applicants)
SECTION B - CONDITIONS GÉNÉRALES (Doit être remplie par tous les demandeurs)

Nationality (If the enterprise is owned by a person or persons, provide the following ownership/shareholder information)
Nationalité (Si l'entreprise appartient à une ou plusieurs personnes, veuillez fournir ci-dessous les renseignements demandés concernant les propriétaires ou actionnaires)

Full name Nom complet	Date of birth Date de naissance D-J | M | Y-A	Citizenship Citoyenneté	Status in Canada Statut au Canada	Amount invested Somme investie	% of stock owned % des actions détenues

If the enterprise is owned by an established firm or firms (joint ownership by maximum of two firms), provide the following ownership information
Si l'entreprise est la propriété d'une ou plusieurs firmes établies (maximum de deux firmes), veuillez fournir les renseignements demandés ci-dessous

Name of owning firm - Nom de la firme propriétaire	Address - Adresse
N/A	N/A

Type of business - Genre d'entreprise	Percentage of ownership of owning firm(s) in enterprise Pourcentage de la participation de la (des) firme(s) propriétaire(s) dans l'entreprise
N/A	0.0 % 0.0 %

Full name of shareholder Nom complet de l'actionnaire	Date of birth Date de naissance D-J | M | Y-A	Citizenship Citoyenneté	Indicate if permanent resident of Canada Indiquer si résident permanent au Canada	% of stock owned % des actions détenues
N/A		N/A	☐ Yes Oui ☐ No Non	
			☐ Yes Oui ☐ No Non	
			☐ Yes Oui ☐ No Non	
			☐ Yes Oui ☐ No Non	
			☐ Yes Oui ☐ No Non	

SECTION C - TRADER REQUIREMENTS (To be completed only if applying for trader status)
SECTION C - EXIGENCES RELATIVES AU STATUT DE NÉGOCIANT (À remplir par les demandeurs du statut de négociant)

1. **Evidence that the position is executive or supervisory or requires essential skills** (Complete only those sections which apply)
Preuves que le poste est un poste de directeur ou de superviseur ou un poste exigeant des compétences essentielles
(Ne remplissez que les parties applicables)

Job title - Titre du poste	Salary - Salaire	Indicate location of job position in organizational structure Indiquez où se situe le poste dans la structure organisationnelle

Job duties - Fonctions du poste

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Describe degree of ultimate control and responsibility over operations
Précisez le degré de contrôle et de responsabilité ultimes des opérations

How many employees and what job titles report directly to this position?
Combien d'employés relèvent directement de ce poste et quels sont leurs titres?

What executive or supervisory experience is required for this job?
Quelle expérience à titre de directeur ou de superviseur exige le poste en question?

If the job is neither executive nor supervisory but requires essential skills, describe in detail what essential skills are required. (Essential skills are special qualifications which are absolutely necessary for the effective operation of the firm in Canada over and above qualifications of an ordinary skilled worker)
Si le poste n'est pas celui de directeur ou de superviseur mais qu'il exige des compétences essentielles, expliquez de quelles compétences il s'agit. (Les compétences essentielles sont les qualités spéciales qui sont absolument nécessaires pour assurer l'efficacité des opérations canadiennes de l'entreprise et que n'a pas le travailleur spécialisé ordinaire.)

2. **Evidence that the firm's activities constitute trade**
The term "TRADE" means the exchange, purchase, or sale of goods and/or services. Goods are tangible commodities or merchandise have intrinsic value, excluding money, securities and negotiable instruments. Services are economic activities whose outputs are other than tangible goods (i.e., international banking, insurance, transportation, communications and data processing, advertising, accounting, design and engineering, management consulting, tourism, etc.).

List the documents you will provide to show exchange/purchase/sale of goods and/or services:

Preuves que les activités de l'entreprise ont valeur de commerce
Le terme « COMMERCE » s'entend de l'échange, de l'achat ou de la vente de produits ou de services. Les produits sont des articles ou des marchandises tangibles ayant une valeur intrinsèque, à l'exception de l'argent, des titres et des effets négociables. Les services sont des activités économiques dont les résultats ne sont pas des produits tangibles. Au nombre de ces activités figurent, entre autres, les services bancaires internationaux, les assurances, le transport, les communications et le traitement des données, la publicité, la comptabilité, la conception et l'ingénierie, les services de conseil et le tourisme.

Énumérez les documents que vous fournissez à titre de preuve de l'échange, de l'achat ou de la vente de produits ou de services :

2. **Evidence that funds have been or will be invested**
Preuves qu'une somme a été ou sera investie

List the documents being provided which show that funds either have been invested or have been irrevocably committed for investment.
Énumérez les documents joints pour établir que des fonds ont été investis ou irrévocablement engagés à titre d'investissement.

List the documents being provided which show the person or firm making the investment has had possession and control of the funds or other capital assets being used for the investment.
Énumérez les documents joints pour établir que les fonds ou autres biens investis appartiennent en propre à la personne ou à la firme qui fait l'investissement.

Describe and document the various forms of investment utilized, i.e., cash, equipment, purchases, inventory, indebtedness, lease/rent payments, etc.
Énumérez et précisez les diverses formes d'investissement en cause : Argent comptant, équipement, achats, stocks, endettement, paiements de loyer, etc.

3. **Evidence that the enterprise is real and commercial**
Preuves que l'entreprise est réelle et active

The enterprise must be a real and active commercial entrepreneurial undertaking which operates continuously to produce some service or commodity for profit. A plan for future investment, expansion, and/or development will assist the consulate in determining the viability of the commercial enterprise. List the documents being provided to show compliance with this criterion.
L'entreprise doit être une entité ou une exploitation commerciale réelle ou active, qui fonctionne de façon continue et produit quelque service ou article dans un but lucratif, un plan d'investissement, d'agrandissement et (ou) d'expansion aidera l'agent des visas à apprécier la viabilité de l'entreprise, énumérez les documents joints pour établir qu'il est satisfait à ce critère.

4. **Evidence that the investment is more than marginal**
Preuves que l'investissement est plus que marginal

What is the anticipated amount of net income to be generated over the next year by the investment? _____ (Canadian dollars)
Quel est le montant prévu de revenu net que procurera l'investissement au cours de l'année à venir? _____ (en dollar canadien)

Describe how you arrived at this figure.
Expliquez comment vous êtes arrivé à ce chiffre.

Describe how the investment will maintain or expand job opportunities locally.
Décrivez comment l'investissement permettra de maintenir ou de créer des emplois localement.

5. **Evidence that you plan to "develop and direct" the enterprise**
Preuves que vous planifiez « développer et diriger » l'entreprise

Describe how your position will allow you to "develop and direct" the enterprise (i.e., exercise operational and/or corporate control). If you, or the American/Mexican firm, have less than 50 per cent controlling interest in the Canadian enterprise, you must be able to demonstrate how, in effect, operational control will be achieved.
Décrivez comment votre poste vous permettra de « développer et diriger » l'entreprise (c'est-à-dire exercer le contrôle opérationnel ou la direction de l'entreprise). Si votre participation ou celle de la firme américaine ou mexicaine dans l'entreprise canadienne est inférieure à 50 p. 100, vous devez pouvoir expliquer comment, en réalité, vous exercerez le contrôle opérationnel.

SECTION E - APPLICANT SEEKING STATUS AS AN EMPLOYEE OF A TRADER OR INVESTOR

Employer status: In order to qualify to bring an employee to Canada in trader or investor status, the employer must already hold trader or investor status in Canada. Where the prospective employer is a corporation or other business organization, the employer must be residing in the United States/Mexico if not maintaining status in Canada. If you are an employee, your employer must support this application with evidence of trader or investor status in Canada, or of residence in the United States/Mexico.

Provide full particulars of your qualifications to perform in an executive or supervisory position. If the job is one requiring essential knowledge or skills, describe how you have come to possess the essential specialization (i.e., comment on the uniqueness of your skills and the period of training required to perform the contemplated job duties). You may wish to attach a curriculum vitae. If you are not in the executive/supervisory/essential knowledge category and are seeking entry as a highly trained technician, provide full details of your training and experience. (For applicants seeking entry for positions requiring essential skills or who are highly trained technicians, employers will have to provide evidence that essential or high-level skills are required.) Investor status can also be granted for a one year period to an employee who is familiar with an American/a Mexican firm for the purpose of starting-up a Canadian affiliate of that firm.

SECTION E - DEMANDEUR DE STATUT À TITRE D'EMPLOYÉ D'UN NÉGOCIANT OU D'UN INVESTISSEUR

Statut de l'employeur : Pour être autorisé à faire venir un employé au Canada en qualité de négociant ou d'investisseur, l'employeur doit déjà avoir ce statut au Canada. Si l'employeur éventuel est une société ou autre organisation commerciale, l'employeur doit être un résident des États-Unis ou du Mexique s'il n'a pas ce statut au Canada. Si vous êtes un employé, votre employeur doit fournir à l'appui de votre demande une preuve soit de statut de négociant ou d'investisseur au Canada, soit de statut de résident aux États-Unis ou au Mexique.

Veuillez fournir des détails complets de votre qualité de directeur ou de superviseur, si le poste exige des connaissances ou compétences essentielles, décrivez comment vous avez acquis ces dernières (c'est-à-dire expliquez l'unicité de vos compétences et la période de formation requise pour pouvoir remplir les fonctions envisagées). Vous pouvez, si vous le voulez, joindre un curriculum vitae. Si vous n'êtes pas un directeur, un superivseur ou une personne ayant des connaissances essentielles et que vous demandez une autorisation de séjour à titre de technicien de formation poussée, veuillez fournir des détails complets de votre formation et de votre expérience. (Dans le cas du demandeur qui sollicite une autorisation de séjour en vue d'occuper un poste exigeant des compétences essentielles ou qui est un technicien de formation poussée, l'employeur doit fournir la preuve que les compétences essentielles ou poussées sont nécessaires.) Le statut d'investisseur peut également être accordé pour une période d'une année à un employé qui connaît bien une firme américaine ou mexicaine en vue d'établir une succursale au Canada.

SECTION F - Please use this space to provide other information **which you deem relevant to your application:**
SECTION F - Veuillez utiliser cet espace pour fournir d'autres renseignements **que vous jugez pertinents** :

I affirm that the information provided on this form or otherwise provided in the way of supporting documentation, whether it is provided by me or another person, is true and complete.

Signature of applicant - Signature du demandeur

Les renseignements fournis dans le présent formulaire et dans les documents justificatifs joints sont véridiques, exacts et complets.

D - J M Y - A

Date

THE INFORMATION YOU PROVIDE ON THIS DOCUMENT IS COLLECTED UNDER THE AUTHORITY OF THE *IMMIGRATION AND REFUGEE PROTECTION ACT* TO DETERMINE IF YOU MAY BE ADMITTED TO CANADA AS A TRADER OR AN INVESTOR. THIS INFORMATION WILL BE STORED IN PERSONAL INFORMATION BANK NUMBER CIC PPU 054, TEMPORARY WORKER RECORDS AND CASE FILE. IT IS PROTECTED AND YOU HAVE THE RIGHT OF ACCESS TO IT UNDER THE PROVISIONS OF THE *PRIVACY ACT*.

LES RENSEIGNEMENTS CONSIGNÉS DANS CE FORMULAIRE SONT RECUEILLIS EN VERTU DE LA *LOI SUR L'IMMIGRATION ET LA PROTECTION DES RÉFUGIÉS* AFIN DE DÉTERMINER SI VOUS POUVEZ ÊTRE ADMIS AU CANADA À TITRE DE NÉGOCIANT OU D'INVESTISSEUR. CES RENSEIGNEMENTS SERONT VERSÉS AU FICHIER DE RENSEIGNEMENTS PERSONNELS CIC PPU 054, DOSSIER ET FICHIER DES TRAVAILLEURS TEMPORAIRES. ILS SONT PROTÉGÉS ET ACCESSIBLES EN VERTU DES DISPOSITIONS DE LA *LOI SUR LA PROTECTION DES RENSEIGNEMENTS PERSONNELS*.

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APPENDIX VI – EXCERPTS FROM CANADA'S TEMPORARY ENTRY PROVISIONS FOR THE TRANS PACIFIC PARTNERSHIP

CANADA'S SCHEDULE OF COMMITMENTS FOR TEMPORARY ENTRY FOR BUSINESS PERSONS

1. The following sets out Canada's commitments in accordance with Article 12.4 (Grant of Temporary Entry) in respect of the temporary entry of business persons.

2. Canada may adopt or maintain any measure that is not specifically prohibited in this schedule.

<table>
<tr><th>Description of Category</th><th>Conditions and Limitations (including length of stay)</th></tr>
<tr><td colspan="2">A. Business Visitors

1. Canada extends its commitments for "after-sales or after-lease service" to business persons of another Party, if that Party has made a commitment in its Schedule for after-sales and after-lease related activities (e.g. installation, maintenance or repair) without reserving the right to impose or maintain an economic needs test or numerical restriction for those activities.

2. Canada extends all other commitments under this category to business persons of another Party, if that Party has made a commitment in its Schedule without reserving the right to impose or maintain an economic needs test or numerical restriction for any of the following headings:

• Business Visitors
• Short Term Business Visitors
• Service Sales Persons

3. Canada shall grant temporary entry to Business Visitors, without requiring that person to obtain a work permit or an equivalent requirement prior to entry as a condition for temporary entry.

4. Canada will not impose or maintain any numerical restriction relating to temporary entry of Business Visitors.</td></tr>
<tr><td><u>Definition:</u>

Business Visitors comprise business persons for whom:

(a) the primary source of remuneration for the proposed business activity is outside Canada; and</td><td>Length of stay is up to six months. Extensions are possible.</td></tr>
</table>

<table>
<tr><th>Description of Category</th><th>Conditions and Limitations (including length of stay)</th></tr>
<tr><td colspan="2">C. Investors

1. Canada extends its commitments under this category to business persons of another Party, if that Party has made a commitment in its Schedule without reserving the right to impose or maintain an economic needs test or numerical restriction for any of the following headings:

• Investors
• Independent Executives
• Persons Responsible for Setting up a Commercial Presence

2. Canada shall grant temporary entry and provide a work permit or work authorisation to Investors and will not:

(a) require labour certification tests or other procedures of similar intent as a condition of temporary entry; or

(b) impose or maintain any numerical restriction relating to temporary entry.
3. Canada shall grant temporary entry and provide a work permit or work authorisation to spouses of Investors of another Party where that Party has also made a commitment in its schedule for spouses of Investors, and will not:

(a) require labour certification tests or other procedures of similar intent as a condition for temporary entry; or

(b) impose or maintain any numerical restriction relating to temporary entry.</td></tr>
<tr><td><u>Definition</u>:

Investors comprise business persons seeking to establish, develop or administer an investment to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital, in a capacity that is supervisory, executive or involves essential skills.</td><td>Length of stay is up to one year. Extensions are possible.

The length of stay for spouses, including extensions, shall be the same as that of the business person they are accompanying who has obtained temporary entry under this Section C.</td></tr>
</table>

APPENDIX VII – Regulation 205(a) and TFW Manual Provisions for C10 Significant Benefit (Emphasis added)

Canadian interests

205 A work permit may be issued under section 200 to a foreign national who intends to perform work that

> (a) would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents;

International Mobility Program: Canadian interests – Significant benefit general guidelines [R205(a) – C10]

This section contains policy, procedures and guidance used by IRCC staff. It is posted on the IRCC website as a courtesy to stakeholders.

In considering Labour Market Impact Assessment's (LMIA) exemptions before issuing a work permit, officers should keep in mind the general principle: authorizing a foreign national to work in Canada has an impact on the Canadian labour market and economy. And, ***generally speaking, officers should be reluctant to issue a work permit without the assurance from Employment and Social Development Canada (ESDC) that the impact on Canada's labour market is likely to be neutral or positive.*** Most exemptions from the need for a positive ESDC's LMIA are very specific and clearly defined such as the policy for spouses of some foreign workers and students, or the regulations regarding issuance of work permits for refugee claimants, or regarding international agreements.

However, circumstances sometimes present officers with situations where an LMIA is not available, and a specific exemption is not applicable, but the balance of practical considerations argues for the issuance of a work permit in a time frame shorter than would be necessary to obtain the ESDC opinion. R205(a) is intended to provide an officer with the flexibility to respond in these situations. It is imperative that this authority not be used for the sake of convenience, nor in any other manner that would undermine or try to circumvent the importance of the LMIA in the work permit process. It is rather intended to address those situations where the social, cultural or economic benefits to Canada of issuing the work permit are so clear and compelling that the importance of the LMIA can be overcome.

Officers should look at the social and cultural benefit of authorizing entry to Canada for persons of international renown, examining whether a person's presence in Canada is crucial to a high-profile event, and whether circumstances have created urgency to the person's entry.

For requests for work permits based on significant economic benefit, where entry into the labour market is concerned, all practical efforts to obtain ESDC's assessment should be made before C10 is applied. Foreign nationals submitting an application for consideration under C10 should provide documentation supporting their claim of providing an important or notable contribution to the Canadian economy.

Assessing significant social or cultural benefit

The foreign national's proposed benefit must be significant, meaning it must be important or notable. Officers should rely heavily on the testimony of credible, trustworthy, and distinguished experts in the foreign national's field and any objective evidence. The foreign national's past record is a good indicator

of their level of achievement. Thus, the foreign national's past track record in their field should be strong and distinguished. It would be helpful to show that the foreign national can immediately be recognized as a leader in their field.

Objective measures for "significant social or cultural benefit"

- an official academic record showing that the foreign national has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of their ability;
- evidence from current or former employers showing that the foreign national has significant full time experience in the occupation for which he or she is sought (significant in this context can be taken to mean ten or more years experience);
- has been the recipient of national or international awards or patent;
- evidence of membership in organizations requiring excellence of its members;
- having been the judge of the work of others;
- evidence of recognition for achievements and significant contributions to the field by peers, governmental organizations, or professional or business associations;
- evidence of scientific or scholarly contributions to the field by the foreign national;
- publications authored by the foreign national in academic or industry publications;
- leading role of the foreign national in an organization with a distinguished reputation;
- francophone foreign workers entering occupations with National Occupation Classification O, A and B, destined outside of Quebec who have been recruited through *Destination Canada* or other employment events coordinated with the federal government and francophone minority communities….

APPENDIX VIII – TFW Manual Provisions for C11 Entrepreneur/Self-Employed Candidates (relevant excerpts only with emphasis added)

This section contains policy, procedures and guidance used by IRCC staff. It is posted on the IRCC website as a courtesy to stakeholders.

Applicants who have, or may have, a dual intent to seek status as a worker and then eventually as a permanent resident, must satisfy the officer that they have the ability and willingness to leave Canada at the end of the temporary period authorized under R183.

Types of applicants:

Permanent resident applicants

If a permanent resident applicant has met the definition of "entrepreneur" or "self-employed" (R97 to R101) and has been selected, they may be issued a work permit if there are compelling and urgent reasons to authorize the entry of the person before processing is complete. They must demonstrate that their admission to Canada to begin establishing or operating their business would generate significant economic, social or cultural benefits or opportunities for Canadian citizens or permanent residents pursuant to R205(a). It is expected that it would be a rare applicant who could satisfy an officer that their entry into Canada would provide a significant benefit before their eligibility for permanent residence has been assessed. It should be noted that any 'early admission' entrepreneurs must also satisfy the officer that they meet the requirements of A22(2), that they 'will leave Canada by the end of the period authorized for their stay', if their permanent residence application is ultimately refused. A work permit should not be granted to remedy concerns relating to processing times, particularly if serious questions such as source of funds remain outstanding.

Note: Special considerations apply when the application for a work permit comes from a foreign national who is being considered by a provincial or territorial government for nomination as a permanent resident. Provinces and territories sometimes identify foreign nationals as potential nominees, based on their intention to undertake business activities in their province or territory, and request they be issued a work permit to undertake entrepreneurial activity **prior to** the actual nomination of the foreign national. This is because they wish to see the potential nominee initiate their business plan as a demonstration of genuineness of intention, before actually nominating the person.

Note: Special consideration is also applicable to entrepreneurs and self-employed individuals destined to Quebec, where a Certificate of Selection for Quebec (CSQ) has been issued, but the foreign national is not yet a permanent resident. While Quebec does not have a Provincial/Territorial Nominee Program, special consideration is applicable on the basis of the Canada-Quebec Accord.

Temporary resident applicants

For applicants who do not intend to reside permanently in Canada, R205(a) may be difficult to satisfy if the profits and economic spin-offs generated by the enterprise do not remain in the Canadian economy. However, there will be situations where the business or the intended period of work is genuinely temporary, i.e., the applicant intends to leave Canada after starting a business, and either close the business (it being seasonal), or hire a Canadian to operate it. Significant benefit must still be

demonstrated. However, benefit to a self-employed worker's Canadian clients may also be considered in this case, particularly if the worker is providing a unique service. If the applicant intends to start or buy a business where their own temporary status may be indefinite (i.e., permanent), officers should encourage the person to apply for permanent residence. There may also be self-employed workers who can demonstrate significant social or cultural benefits who intend to work in Canada for only a temporary period.

Work permit duration

The initial work permit can be issued for a maximum of two years, and subsequently extensions are possible only if a proof of selection by a province or territory is provided. It is expected that the province or territory will decide during this two-year period whether or not to nominate the person (see Agreements).

Note: It is not necessary that the application for permanent residence of the foreign national be received by **CIC** for the work permit to be issued. The letter from the province or territory is sufficient to trigger this Labour Market Impact Assessment (LMIA) exemption.

Long-term self-employed applicants

Applicants who have repeatedly been issued work permits over several years in the self-employed category should, in addition to satisfying the indicators of general economic stimulus, be able to provide evidence of the following:

- registration of their business as a legal entity in Canada;
- demonstration that the profits of the business remain predominantly in Canada or proof that other significant benefits have accrued to Canada;
- proof that all appropriate federal, provincial/territorial and local tax returns have been filed; and
- proof that they meet the temporary requirement of A22(2)—will leave Canada at the end of the period authorized for their stay.

Factors in considering "significant benefit"

In cases where significant benefit is being argued, officers may wish to consult organizations in Canada who can provide an opinion. For example, if an applicant wishes to be self-employed in the tourism industry, officers should contact the provincial tourism authority to determine whether the activity would be beneficial or actually impinge on Canadian service providers. Other sources of information and advice include local Canadian Chambers of Commerce, and Employment and Social Development Canada (who, while unable to formally confirm self-employment, should have knowledge of the local labour market situation). ***Examples of indicators of 'significant benefit' include: general economic stimulus (such as job creation, development in a regional or remote setting or expansion of export markets for Canadian products and services) and advancement of the Canadian industry (such as technological development, product***

Sole or partial ownership

Irrespective of permanent residence requirements, ideally, the issuance of work permits for entrepreneurs should only be considered when the applicant controls at least 50% of the business in question. However, there may be cases where an individual owns a slightly smaller stake and will be coming to work in the business. In these cases, a partial owner with an ownership share of less than 50% would be required to apply for a work permit as an employee (rather than as an entrepreneur) and thus may require an LMIA. An employer-employee relationship must be established to issue an LMIA. A virtual, or having the appearance of an, employer-employee relationship is not a true reflection of a business operation. See the guidelines for assessing employer/employee relationships. ESDC cannot offer a formal LMIA in cases where there is no job offer or wages, but they can provide informal assistance to officers processing these applications, such as supplying information on known employers who have applied for an LMIA in the past, which can help verify whether the business is an existing concern in Canada, if there are existing employees, or whether there are similar businesses already in existence, etc. Questions to consider in determining whether R205(*a*) is met (whatever percentage of the business in Canada is owned) are similar to the factors laid out in R203:

- *Is the work likely to create a viable business that will benefit Canadian workers or provide economic stimulus?*
- *Does this worker have a particular background or skills that will improve the viability of the business?*

Just because an individual owns shares in a business does NOT mean that they will meet the requirements of R205(*a*). A work permit may only be issued if significant benefit would result from the work of the applicant in Canada.

If there are multiple owners, generally only one owner would be eligible for a work permit pursuant to R205(a), unless exceptional circumstances can be demonstrated. Any further work permit applicants require a LMIA. While CIC does not want to discourage investment in Canada, these guidelines are intended to prevent transfer of minority shares solely for the purpose of obtaining a work permit.

Date Modified:
2014-09-18

APPENDIX IX – CBA Proposal for the Canadian Business Experience Class

THE CANADIAN BAR ASSOCIATION
L'ASSOCIATION DU BARREAU CANADIEN
INFLUENCE. LEADERSHIP. PROTECTION.

December 1, 2015

Via email: Matthew.Graham@cic.gc.ca

Matthew Graham
Acting Director, Economic Immigration Policy and Programs Division
Immigration Branch
Immigration, Refugees and Citizenship Canada
365 Laurier Avenue West
Ottawa, ON K1A 1L1

Dear Mr. Graham:

Re: Proposal for a Canadian Business Experience Class

I am writing on behalf of the Immigration Law Section of the Canadian Bar Association (the CBA Section) to propose the creation of a new business immigration class – the Canadian Business Experience Class (CBEC). The CBA is a national association of over 36,000 lawyers, notaries, students and law teachers, with a mandate to promote improvements in the law and the administration of justice. The CBA Section comprises lawyers whose practices embrace all aspects of immigration and refugee law.

We understand that Immigration, Refugees and Citizenship Canada seeks to attract additional innovative entrepreneurs and executives to contribute to the development of Canadian technologies. These are different kinds of individuals, although they may share some characteristics. However, it is difficult at present for innovative entrepreneurs to come to Canada to establish a business and immigrate. The Start-Up Visa Program is difficult for its intended beneficiaries to use in practice. Canadian venture capital groups, angel investors and business incubators have no shortage of would-be Canadian entrepreneurs seeking funding. Foreign entrepreneurs seeking financial backing from these groups face further difficulties because of issues such as distance and language and cultural differences. In short, foreign entrepreneurs with innovative ideas and capabilities have great difficulty attracting the interest of Canadian funders. We believe our proposed Canadian Business Experience Class could meet these needs.

500-865 Carling Avenue, Ottawa, ON, Canada K1S 5S8
tel/tél. : 613.237.2925 | **toll free/sans frais** : 1.800.267.8860 | **fax/téléc.** : 613.237.0185 | www.cba.org
Membership/Adhésion : memberservice@cba.org | **PD/DP** : pd@cba.org | **Sections** : cba.sections@cba.org | **General/Générale** : info@cba.org

Canadian Business Experience Class (CBEC)

Basic Requirements: To qualify for permanent residence under the CBEC, the applicant would be required to establish:

- management of a qualifying business in Canada for at least two of three years before the date of application; and
- ownership of at least 33 per cent of the shares in the qualifying business during the relevant two-year period.

Qualifying Business: A qualifying business would be a business established in Canada that:

- has created at least three full-time equivalent (FTE) positions (at 30 hours per week) per applicant (if more than one entrepreneur applicant), other than for the entrepreneur or a family member of the entrepreneur; and
- has done so for at least two years.

Employment Created or Maintained: For the three FTE positions:

- The employment positions could either involve employees on the company payroll or contractors working for the company;
- If an existing job was maintained (rather than created), this would count as an FTE.

Language requirements: CBEC applicants would be required to possess minimum language skills. We suggest a minimum level of proficiency similar to that for the Federal Skilled Trades Class (FSTC) category, or the speaking and listening proficiency required to obtain Canadian citizenship.

Express Entry: Applicants under this category should be awarded 600 points towards Express Entry (EE) under the new CBEC and they could then enter into the EE pool once they meet the above requirements. They would be processed to become permanent residents like others in the pool.

Rationale for the CBEC Criteria

It is difficult to identify the criteria that define innovative entrepreneurs and those who can develop technologies. Selection criteria such as age, education, language abilities, and even net worth may not be adequate in identifying the quality candidates that Immigration, Refugees and Citizenship Canada seeks. Consider:

a. *Educational credentials alone do not turn out entrepreneurs.* Some of the wealthiest immigrants we have helped were high school dropouts. Bill Gates, Steve Jobs and Mark Zuckerberg were college dropouts. We recommend that educational credentials not be a factor for CBEC.

b. *Language abilities and testing:* We recommend the FSTC language proficiency level or the citizenship tests for speaking and listening as the baselines, since applicants will have already demonstrated their ability to run a business in Canada.

c. *Personal net worth:* Immigration, Refugees and Citizenship Canada and provincial nominee programs have in the past included a net worth requirement for business immigrant categories. The rationale appears to be twofold:

1. *It is an indication of the immigrant's success in business.* However, the person's wealth might have been inherited, they may own a home that increased greatly in value or might have become wealthy through the stock market. The money that entrepreneurs make from their own business – be it manufacturing, trading, or technology – is often a small fraction of their total net worth, as they make most of their money in other ways.
2. *It is an indication of the ability to invest in a business in Canada.* This is certainly a valid criterion. However, advances in technology mean that business models often require a fraction of the investment capital that would once have been needed to establish a successful business.

For these reasons, we see no benefit to having a specific personal net worth requirement for the Canadian innovator class and recommend that it be eliminated. If an individual has enough wealth to establish a Canadian business and hire three Canadians for two years, that should suffice to prove their ability to establish the business.

The best test of a successful entrepreneur of any kind in Canada is their track record – whether the person has succeeded. This is the merit of the proposed CBEC. Foreign entrepreneurs who come to Canada, obtain work permits and establish a business employing Canadians for at least two years contribute much to the Canadian economy and their entry and immigration should be facilitated.

Taking this approach would be in line with Immigration, Refugees and Citizenship Canada's overall direction – i.e., enter as a worker and then transition to permanent residence. Consider:

- The Canadian Experience Class Program selects immigrants who have proven that they can become economically established in Canada as skilled workers;
- Business Provincial Nominee Programs (PNPs), such as BC's, have a two-step process. An entrepreneur receives a two-year work permit to establish a business under agreed conditions. An entrepreneur who satisfies the conditions receives a PNP nomination;
- The Live-in Caregiver Program now allows caregivers to come to Canada under work permit types and to apply for permanent residence after two years of Canadian experience.

Work Permits for Applicants

Applicants will need work permits (WPs) to come to Canada to establish a qualifying business in the two or three years before making an application for permanent residence. They can now obtain the following WPs:

- Investor work permits, similar to North American Free Trade Agreement (NAFTA) or other free trade agreement (FTA) investor work permits;
- Owner Operator Labour Market Impact Assessment (LMIA)-based work permits;
- Significant Benefit work permits pursuant to section 205(a) of the *Immigration and Refugee Protection Regulations* (IRPR);
- Intra-company transfers (ICT);

- Work permits for spouses or common law partners of study- or work permit holders;
- International students on post-graduation work permits (PGWP);
- International Experience Canada (IEC) workers.

A dedicated work permit path for CBEC candidates would be desirable as there are limitations (described below) under the existing paths:

- NAFTA and FTA WPs apply only to citizens of about seven countries;
- Owner Operator LMIAs are assessed by Employment and Social Development Canada (ESDC), and processing times are lengthy and unpredictable;
- Significant Benefit work permits are handled inconsistently, as the Foreign Worker guidelines are unclear;
- ICTs work only in limited situations;
- Spousal/Common Law WPs or PGWPs are of limited duration;
- IEC work permits are of very short duration.

Proposed Additional Work Permit Category for CBEC Candidates

In addition to the above categories, we propose a new WP category, set out in 1 below.

1. **Investor work permits, similar to NAFTA or other FTA investor work permits.** At present, applicants for NAFTA investor permits must establish that they:
    a) are citizens of the USA, Mexico, or other qualifying FTA country;
    b) have made, or are in the process of making, a "substantial investment" in a business in Canada;
    c) are coming to Canada to develop and direct that business; and
    d) otherwise comply with existing measures for temporary entry.

    No minimum investment is required for a "substantial investment." A proportionality test is used instead. The Immigration Manual outlines several tests to ensure economic benefit from the business enterprise.

    In items 2 and 3 we propose ways to improve two of the existing categories.

2. **Clarification on Owner Operator LMIAs:** Section 203(1) of the IRPR provides that work permits may be issued to foreign nationals whose proposed Canadian employer has obtained an opinion from ESDC that the job offer is genuine and would likely have a neutral or positive effect on the Canadian labour market. The last policy directive appears to be a Temporary Foreign Worker Program bulletin dated April 15, 2011, from Andrew Kenyon, then Director General of the TFW and Labour Market Information Directorate at ESDC national headquarters.

    Entrepreneurs coming to Canada to establish or purchase a business would not take jobs from Canadians. They would also likely have a positive, or at least neutral,

effect on the Canadian labour market. This would be a very useful vehicle for CBEC candidates to come to Canada.

3. **IRPR Section 205(a) – significant benefit to Canada:** A policy could be developed to help entrepreneurs obtain work permits on the basis of job creation. Policy C11 was previously used for entrepreneurs or self-employed applicants who had filed a permanent resident application and were requesting early entry to establish their business. Though this Policy would likely need significant changes, this could be easily done.

Thank you for your willingness to consider our views. Please do not hesitate to contact us to discuss this proposal.

Yours truly,

(original letter signed by Eugene Oscapella for Stéphane Duval)

Stéphane Duval
Chair, CBA Immigration Law Section

APPENDIX X – Lowe & Company Letter dated March 18, 2016 to Minister McCallum proposing the Canadian Business Experience Class and an Investor Work Permit

LOWE AND COMPANY

Immigration & Business Lawyers

Jeffrey S. Lowe* | Robert Y.C. Leong* | Stanley W.H. Leo | *Law Corporation

March 18, 2016

The Honourable John McCallum, P.C., M.P.
365 Laurier Avenue West
Ottawa, Ontario
K1A 1L1

Dear Minister McCallum:

RE: Proposal for A New Canadian Business Experience Class

Thank you for coming to speak to the Greater Vancouver Board of Trade today! Immigration has always been an integral part of the fabric of Canadian society, and in keeping with your new government's desire to foster growth in our economy, immigration policies play a critical role. From bringing in skilled workers to fill vacancies from retiring baby boomers, to filling labour shortages in key sectors, to bringing in new businesses and innovation to Canada, immigration is an important economic policy tool.

The Problem: Lack of a Business Immigration Program

Since June 2011, when Canada stopped accepting new Investor and Entrepreneur applications, there has not been a Federal Business Immigration category. This has put pressure on the business Provincial Nominee Programs, such as BC, Saskatchewan and others, which became backlogged with thousands of cases which will take years to clear.

As a result, Canada is losing opportunities for foreign businesspeople to invest, innovate, create jobs, and exports. In addition, many business immigrants have tried to fit into PNP programs which were never designed for them, causing a misallocation of resources for both the Immigrants and for Canada.

The Solution: The Canadian Business Experience Class

If someone can operate a business in Canada with Canadian employees for at least 2 years, that would create more economic benefit to Canada than a business plan with grand promises. Unlike the previous Entrepreneur Immigrant program, there would be NO monitoring required, saving valuable resources. We worked with the Canadian Bar Association to present a proposal to Matthew Graham at the IRCC for a Canadian Business Experience Class in December, 2015 (copy enclosed) which I will summarize here.

1. **Suggested Parameters for the Canadian Business Experience Class:** Rather than just a plan to create or maintain jobs, which must be monitored after the entrepreneur lands, he/she will already have created jobs for 2 years. Here are suggested parameters:

    a. 3 Full Time equivalent Jobs (30 hours/week) for Canadians; and
    b. These be in 2 out of the 3 years immediately before applying.

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2. **Some "traditional" assessment factors are not as relevant:**

    a. ***Education:*** Bill Gates, Steve Jobs, Mark Zuckerberg: these were college dropouts;
    b. ***Language:*** Many successful entrepreneurs globally speak limited English;
    c. ***Net worth:*** Money, perhaps from inheritance, does not guarantee business success.
    d. ***Investment:*** With technology, one can start a global business with under $100,000;
    e. ***Experience:*** Business or management experience overseas may not transfer well to Canada where the language, business norms, culture are very different.

I would submit that the only reliable indicator of Economic Benefit to Canada is proven Canadian Business Experience with Canadian employees over at least a 2 year period. This could be easily implemented under the Ministerial Instructions, similar to the Startup Visa.

Part 2: The Investor Work Permit

To be able to establish and operate a business in Canada for 2 years, one needs a Work Permit. While there are a number of ways to obtain this, the only "Dedicated" Work Permit options to establish or purchase a business in Canada are the "Investor Work Permit" provisions under NAFTA, and 5 other Free Trade Agreements (Chile, Columbia, Panama, Peru and South Korea). These provisions allow citizens of member nations to make a "substantial investment" in Canada to establish or purchase a business, then obtain an Investor Work Permit to develop and direct that business.

We note that the Trans Pacific Partnership Agreement, if ratified, could allow citizens of up to 7 new countries to obtain Investor Work Permits (Australia, Brunei, Japan, Malaysia, New Zealand, Singapore and Viet Nam). Also, it is interesting to note that the USA has about 80 countries whose citizens are eligible to apply for the E2 Treaty Investor Work Visas, similar to the NAFTA and FTA Work Permits in Canada.

In Canada, the Owner Operator LMIA Work Permits and the Significant Benefit to Canada Work Permits are available to citizens of all countries. However, these are cumbersome and the policies are unclear, making it difficult to plan. ***Thus, if you are considering implementing the Canadian Business Experience Class, we would also strongly urge you to consider a Canadian Investor Work Permit to make that available to all foreign businesspeople who wish to establish a business in Canada. This could be easily done by creating a policy under Regulation 205(a), similar to the policies C10 or C11 Significant Benefit to Canada.***

Thank you for your consideration!

Yours truly,

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APPENDIX XI – South China Morning Post, "Study reveals awfulness of Canadian Investor Immigration"

Study reveals awfulness of Canadian investor immigration; income tax averages C$1,400 per millionaire

British Columbia ends up housing ten times more rich newcomers than Quebec – but Quebec gets ten times more of their 'investment' than BC

PUBLISHED : Wednesday, 23 March, 2016, 5:33am
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Vancouver's new property player has deep pockets - and a rich Chinese communist pedigree
24 Feb 2016
At last week's "emergency meeting" on Vancouver housing affordability, local MLA David Eby struck a chord in his opening remarks.

"We have every reason to welcome immigration from China and all over the world; it's what built British Columbia…but no matter what, extreme wealth should not put you at the front of the line for immigration," said Eby, of the left-leaning NDP, to long applause.

Many Vancouverites, ethnically Chinese and non-so alike, understand on an instinctive level that selling permanent residency and passports is a Bad Idea. But I doubt many are aware of the precise awfulness of the Immigrant Investor Program (IIP) and the Quebec IIP that have brought tens of thousands of millionaire households to the city for the past 30 years.

In so doing, these schemes have likely driven up real estate prices and unaffordability, research has found.

Yet other resultant economic activity is scant – in fact, investor migrants' favourite "business" is real estate ownership.

Average annual income tax paid by millionaire migrants was C$1,400. No, that isn't missing a zero That's just one finding of a Federal government evaluation of the Chinese-dominated investor schemes, quietly published in October 2014. I can find no reference to the 103-page report in any media; two leading academics who have studied the schemes for years were unware of it before I forwarded it to them this week.

A skinny internal report on immigrant employment earnings, dating from 2012, gave a hint of what many suspected about the investor schemes, whose only real requirement of applicants was a willingness to hand over a pile of cash (latterly, C$800,000) as a five-year loan to Canada. But the latest data is depressingly comprehensive.

Among other things it reveals that 10 years after admission, the average annual income tax paid by millionaire migrants' primary breadwinners was C$1,400. No, that isn't missing a zero. The true average is even lower - since one third did not file tax returns.

Compare that to the C$10,900 paid by skilled worker immigrants, or the C$7,500 paid by Canadians on average.

Ten years after arrival, the primary breadwinner of Canadian investor immigrant households declared an average taxable income of C$15,800 and paid C$1,400 in income tax. Photo: Citizenship and Immigration Canada

Millionaire migrants' average taxable income from all sources peaks at C$19,500 three years after arrival, but then defies the trend of other immigrant classes by falling sharply, to C$15,800 after 10 years. The report notes "increasing rates of out-migration after five years (especially among investors) may indicate a relationship with obtaining citizenship … a share of these immigrants wait to obtain Canadian citizenship to move out of the country."

The Quebec backdoor: still open, still ripping off BC

Why does this matter? Wasn't the federal IIP shut down? Yes, but the QIIP continues to operate and has always been the biggest component of investor migration to Canada. In fact, with 1,750 applications accepted annually, and a hefty backlog, Quebec's immigration department is on track to funnel about 1,400 new millionaire households to Vancouver per year; that's down from the 2011 peak, but is about the same average level the city received under both the federal and Quebec schemes in the past decade.

The latest report provides more evidence of how rich immigrants have been using Quebec as a

backdoor to BC.

CIC charts show how Quebec received C$3.75billion in loans from its investor immigration program, while BC only received $366million in federal Canadian IIP funds. Yet BC ends up housing ten times more of all investor migrants than Quebec. Photo: Citizenship and Immigration Canada

It says a majority (50.7 per cent) of all supposed business immigrants to Quebec (mostly QIIP, but some self-employed and entrepreneur immigrants) from 1995-2010 actually ended up living in BC, according to their 2010 tax returns.

The upshot? Quebec has charged investor migrants billions in loans for the right to live in Vancouver Only 16 per cent of Quebec business immigrants lived there in 2010. These numbers are consistent with previous data, from permanent residency card renewals, showing 89 per cent of QIIP immigrants leave the French-speaking province.

The upshot? Quebec has charged investor migrants billions in loans for the right to live in Vancouver.

The latest report shows Quebec received C$3.75 billion in QIIP "investments" from 2007-2011, representing 58 per cent of the entire IIP/QIIP cash take. Yet the residency card data suggests only 6.4 per cent ended up living there.

For hapless BC, the situation is reversed: Victoria received just 5.7 per cent of the cash, at C$366million, but BC ended up housing about 62 per cent of the immigrants (including an estimated 59 per cent of QIIP migrants and 65.8 per cent of federal migrants).

Favourite business? Real estate

The stated objective of millionaire migration (and other business-class migration) is to strengthen Canada's economy, and for such immigrants to become economically established in Canada.

But it turns out that investor migrants aren't declaring much income - so how have they been occupying themselves?

The study finds only 10 per cent of millionaire migrants declare ANY self-employment business activity. However, their single most popular Canadian business activity, by a huge margin, is real estate rentals and ownership.

Real estate rental operations made up 63.1 per cent of all their unincorporated businesses. Including incorporated firms, real estate and rentals represented 48.8 per cent of investor migrant businesses.

This chart shows that the most popular business activity by far for Canada's investor immigrants is real estate ownership and rental, at 63.1 per cent of all unincorporated businesses. Photo: Citizenship and Immigration Canada

The list of categories in which investor migration fails to impress is long and wearying. Investors have the highest rates of outward migration from Canada among categories listed by the report, at 26.2 per cent after 10 years. They have far worse English or French skills than most of their fellow migrants, with 66 per cent speaking neither. And the average number of employees in an investor immigrant business? One.

So why do millionaires immigrate to Canada at all? Immigration caseworkers were asked as part of the study. They expressed concern that business immigrants, and especially investors, "use the program to obtain citizenship, as an insurance policy in the case of political or economic uncertainty in their home country, without having the intention to reside in Canada".

The lowest bar of expectation

Blame for all this doesn't really lie with the individual immigrants, the study concludes. "Although the economic performance of BIs [business immigrants] was lower than that of other economic classes considered by the evaluation, BIs met the expectations for which they were selected," it says.

Post-arrival, those expectations imposed upon investor migrants are described by the study as "none".

Hundreds of people attend the March 16 meeting on affordable housing in Vancouver. Photo: CBC

This sets the lowest of bars for a substantial cohort. From inception in 1986 to 2014, the IIP and QIIP brought 190,487 wealthy immigrants to Canada, and most ended up in Vancouver. An official figure is unavailable, but given that two-thirds of Federal IIP arrivals settle in BC, and the vast majority of Quebec arrivals promptly flee the French-speaking province, around 120,000 millionaire migrants have likely moved to Vancouver under both IIPs, a large majority of them from greater China. UBC's professor David Ley estimates 200,000 under the three streams of the business program from 1980 to 2012.

Despite the litany of failures it outlines, the federal evaluation comes down broadly in favour of continuing business and investor migration, albeit with some suggestions. These included increasing the C$800,000 IIP investment as high as C$3 million and directing this capital to at-risk investment instead of simply returning it intact after five years.

Yet none of this changes the fundamental message wealth-determined migration sends to applicants and society as a whole – that Canadian citizenship is for sale, and that once you are in, it just doesn't matter how you behave economically.

*

The Hongcouver blog is devoted to the hybrid culture of its namesake cities: Hong Kong and Vancouver. All story ideas and comments are welcome. Connect with me by email ian.young@scmp.com or on Twitter, @ianjamesyoung70.

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