



INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

## **NEW JOB - YES, NEW COUNTRY - YES, NEW VISA – WAIT, NEW WHAT?**

**Immigration Law Sub-commission**

**National Report of Canada**

**Larry Markowitz**

Redpath Holdings

1155 René-Lévesque Boulevard West, Suite 2500

Montreal, Québec, Canada H3B 2K4

Telephone: +1.514.937.9000

[larry.markowitz@redpathholdings.ca](mailto:larry.markowitz@redpathholdings.ca)

**Date: March 14, 2015**

General Reporter

Firuzah Ahmed, KINGSLEY NAPLEY LLP

[FAhmed@kingsleynapley.co.uk](mailto:FAhmed@kingsleynapley.co.uk)

## A. Introduction

Working Session Title: “*New job - yes, new country - yes, new visa – wait, new what?*” Or to put it another way, when an individual is moving to a different country for a new job, what their employer needs to consider from an immigration perspective – and don’t forget the family!

## B. Questionnaire

### 1. Does your jurisdiction permit the direct sponsorship of workers by employers?

In Canada, the term “sponsorship” does not refer to workers. Rather, it refers to a situation where a foreign national has applied for permanent residence under the “Family Class”. In such a situation, a sponsorship agreement is signed between a sponsored immigrant and his or her sponsor, outlining the obligations and commitments of both parties. The agreement is required before the sponsored person can immigrate to Canada.

A worker would come to Canada under a different framework, including primarily the following categories:

#### A. Permanent workers

Employers can hire a skilled worker to fill vacancies on a permanent basis when they cannot find any Canadians or permanent residents for the job.

#### B. Foreign workers

Employers can hire foreign workers through (a) the *Temporary Foreign Worker Program*, or (b) the *International Mobility Program*:

(a) The **Temporary Foreign Worker Program** lets employers hire foreign workers to fill temporary labour and skill shortages. Employers need to get a Labour Market Impact Assessment (“LMIA”) by Employment and Social Development Canada to hire through this program. An LMIA verifies that there is a need for a foreign worker and that no Canadians can do the job. Under this program, the employer can hire foreign workers who are abroad or who are already in Canada.

(b) The **International Mobility Program** lets employers hire foreign workers without the need of an LMIA. Exemptions from the LMIA process are available where there are reciprocal benefits for Canadians and other competitive advantages for Canada.

Examples of individuals who come to Canada under an LMIA-exempt program include: international students who have graduated from a Canadian school; persons authorized to work in Canada temporarily due to free trade agreements, such as the North American Free Trade Agreement, International Experience Canada participants, some permanent resident

applicants settling in Canada while their permanent residency application is finalized, and spouses of highly-skilled foreign workers.

### **C. Francophone workers outside Quebec**

Citizenship and Immigration Canada (CIC) offers options for employers to hire Francophone workers outside the Province of Quebec. This is intended to contribute to the vitality, development and prosperity of Francophone minority communities in Canada.

Hiring a Francophone candidate allows the employer to be better able to serve clients in both of Canada's official languages and potentially tap into new markets, new international networks or adopt new ways of doing business.

### **2. If yes, please briefly outline the options for a company to sponsor workers with timings.**

Processing times for *temporary* work permit applications processed by visa offices outside Canada vary between one and 11 weeks, depending on the particular Canadian foreign visa office.

For *permanent* positions, the Express Entry program was launched in January 2015. It's a new way for the Government of Canada to manage applications in key economic immigration programs including:

- The Federal Skilled Worker Program;
- Federal Skilled Trades Program;
- Canadian Experience Class; and
- a portion of the Provincial Nominee Program.

Under Express Entry, eligible employers in Canada now have a direct role in recruiting economic immigrants, and Citizenship and Immigration Canada will process most applications in six months or less.

### **3. Is there any way to fast track such applications? If so, how quickly can this be done and is there a cost involved?**

No, but to help eligible employers staff positions quickly, Citizenship and Immigration Canada will process most applications under Express Entry in six months or less.

### **4. Are family members allowed to accompany the migrant?**

An applicant's spouse or common-law partner and their dependent children (see definition of "dependent child" at response to *Question # 6* below) may apply to come to Canada with the applicant, and, if they wish, apply for a study or work permit.

If the spouse or common-law partner wants to work while in Canada, they must apply for their own work permit. Normally, they must meet the same rules as the principal applicant. This includes their employer getting an LMIA from Employment and Social Development Canada/Service Canada, if needed.

An applicant's spouse or common-law partner can apply for an open work permit if the principal applicant is:

- approved to work in Canada for six months or longer, and
- doing a job at Skill Level 0, A or B in the National Occupational Classification.

If the principal applicant has an open work permit (e.g. post-graduation work permit, International Experience Canada, etc.), their spouse must attach a copy of the applicant's work permit to their application for an open work permit, along with a:

- letter from the spouse's current employer that confirms the spouse works there in an occupation that falls under certain specified categories, or a copy of the spouse's employment offer or contract, and
- copy of the spouse's recent pay slips.

The spouse's permit will not be valid longer than that of the principal applicant.

The applicant's dependent children (see definition of "dependent child" at response to *Question # 6* below) may also apply to come with the applicant to Canada and, if they wish, apply for a study or work permit.

**5. If yes, what applications must be made for any dependant family members?**

See response to *Question # 4* above.

**6. Who are deemed to come within the description of "family members" in immigration law in your jurisdiction?**

Spouse or common-law partner, and dependent children.

A "dependent child" is defined as a child who depends on their parent for financial and other support. A son or daughter is considered a dependant of their parent when the child is:

- under 19 years old, and does not have a spouse or partner, or
- 19 years old and over, and has depended largely on the parent's financial support since before the age of 19 because of a physical or mental condition.

## **7. What rights do family members have to employment, self employment or other activities in your jurisdiction?**

If the applicant's spouse or common-law partner wants to work in Canada, they must apply for their own work permit. Normally, they must meet the same requirements as the applicant.

In most cases, the spouse or common-law partner must apply for a work permit for a specific job. The employer may have to get a Labour Market Impact Assessment ("LMIA") from Employment and Social Development Canada. An LMIA allows a particular employer to hire someone for a specific job.

However, the spouse or common-law partner may be able to apply for an open work permit—allowing him or her to accept any job with any employer—if

- 1) the main applicant is:
  - allowed to work in Canada for at least six months;
  - doing work in Canada that meets a minimum skill level (usually work that requires at least a college diploma); and
  - doing a job listed in Skill Level 0, A or B in the National Occupational Classification,

OR

- 2) the principal applicant is:
  - allowed to work in Canada; and
  - doing work in Canada that is on a list of eligible occupations in participating provinces of Canada.

If the spouse or common-law partner gets an open work permit, it is normally valid for the same period as that of the main applicant.

In some cases, the spouse or common-law partner will need a medical exam.

Some Canadian provinces also have pilot projects for spouses or common-law partners to get open work permits in some cases.

## **8. What of family members, eg children, who are over the age of 18?**

No special treatment for anyone other than spouse or common-law partner, and dependent children.

**9. What of family members who will reach the age of 18 whilst the migrant is employed and sponsored in your jurisdiction?**

The age of a dependent child is locked-in at the first formal stage of the application process under which the principal applicant is applying. Therefore, provided that Citizenship and Immigration Canada (“CIC”) received the application before the child turned 19, the child is considered a “dependent child”, regardless of when the application is ultimately processed.