

## **15 Facts about the Express Entry System**

by: Betsy Kane, C.S., Capelle Kane Immigration Lawyers, April 17 2015

- 1.** The Express Entry program is not simply a case management system as claimed by Citizenship and Immigration Canada. Rather, it creates a new layer of requirements before applicants are “invited” to make an economic class application for permanent residence status. The new requirements apply to all applicants in the Federal Skilled Worker, (FSW), Canada Experience Class (CEC) and Federal Skilled Trade classes including some provincial nominees.
- 2.** The Express Entry program is effectively an extension of the new stricter temporary foreign worker program imposed in June 2014. Under Express Entry, Canadian employers and potential applicants will need to obtain a government approved (federal or provincial/territorial) job offer in order to ensure that they are invited to apply for permanent residence. In order to obtain a federally approved job offer, all employers will need to apply for a Labour Market Impact Assessment (LMIA) by undertaking extensive recruitment campaigns and proving that no Canadian citizens or permanent residents were available for the position.
- 3.** Under the Express Entry Program, CIC states that prospective immigrants will need a job offer to rank highly under this new system. CIC is not speaking of just any job offer. Rather, a “job offer” under Express Entry is a Labour Market Impact Assessment (LMIA) approved job offer or one supported by provincial nomination. In order to rank highest in the pool of potential immigrants and compete for an Invitation to Apply (ITA), an applicant will need a job offer that has been approved by a federal LMIA or they will need a provincial government nomination.
- 4.** Under Express Entry professionals and intra-company transferees already working in Canada under valid work permits, exempt from the need for a labour market assessment (i.e. US and Mexican nationals under NAFTA or IEC participants), will now need to have their employer obtain a LMIA or a PNP nomination to achieve maximum points and guarantee receipt of an Invitation to Apply (ITA). \* Under the last two draws some applicants without an LMIA have received an ITA.
- 5.** Under Express Entry, international students (such as those from Brazil, China, India) who have come to Canada for international study and expected to easily transition to permanent residence status, will now have to have their entry-level job offers approved by government departments to determine whether their Canadian education and experience are compatible with the needs of the Canadian labour market. International Students in

Canada are no longer viewed as highly desirable immigrants. This is a marked departure from CIC's policies and selection objectives over the last several years.

6. Under Canadian public policy, the government objective is to seek out young and labour market ready immigrants who will have the longest period of labour market participation and contribute to Canada as long-term taxpayers. The International Experience Class and the Working Holiday Program bring young professionals to Canada as international exchange participants. The government has expanded efforts in recent years to bring Australian and Irish youth (many of whom are qualified in a skilled trade) as well as young francophone professionals to work in Canada. Under Express Entry, these perfectly suited immigrants will have to compete with applicants who have no Canadian experience, but whose employers were able to secure a Labour Market Impact Assessment approval or Provincial Nomination Certificate. Again young immigrants with Canadian labour market attachment are not guaranteed an ITA.
7. Under Express Entry, genuine and well-intentioned employers will be forced to falsely advertise vacancies and clog the national job bank with job postings that are not real vacancies. This will skew the labour market data collected by our government at a time when the government is working to improve the quality of labour market information that shapes Canadian public policy. By requiring employers to seek out LMIA's to better position their employee's chances of success under Express Entry, the government is undermining the integrity of our temporary and permanent immigration programs and potentially exposing Canadian employers to invasive compliance audits.
8. Under Express Entry, Employers who seek out LMIA's to assist their foreign workers in qualifying for permanent residence status will be subject to the full force of law under Canada's new compliance regime designed to catch unscrupulous or abusive employers. Genuine Canadian employers who would not otherwise need a LMIA for their employees to qualify for permanent residence status, will now have to consent to cooperate with rigorous government audits of their business records going back 2 to 6 years. Government audit powers permit the government to demand corporate, tax, payroll & workplace safety records amongst others. The audit powers also permit the government to perform on-site inspections and revoke work permits or LMIA's of other foreign worker employed by the company. Employers may also be exposed to hefty administrative monetary penalties, criminal sanctions and face the possibility of company blacklisting on the ESDC website that names employers deemed non-compliant by the government.
9. Under the pre-application phase of Express Entry, when creating a personal profile, applicants' must ensure that all information put into their profile is

100% accurate and reflective of their points or human capital factors. Any error or misunderstanding in the pre-application phase of the process could be construed as a misrepresentation by CIC and could result in an applicant being banned from entry to Canada for *5 years* based on an allegation of misrepresentation in their profile, no matter what the rationale or compassionate reasons for the inaccuracy. CIC is actively publishing recourse under the misrepresentation provisions of IRPA when advertising the new Express Entry system.

- 10.** Once invited to apply for permanent residence under Express Entry, applicants could have their selection revoked if they fail to perfectly complete their application through the new on-line portal. CIC will take a new tougher stand on what constitutes a complete application. If the application is deemed incomplete, applicants must return to the pool and hope they receive a second invitation to apply.
- 11.** Under Express Entry, Provincial Nominees who would otherwise not be required to take a language test or have their foreign education credentials assessed, will now have to undertake these steps in order to qualify for entry into the provincial nomination pool within the Express Entry stream. Similarly, CEC applicants who do not need an educational assessment will need one to rank higher under the Comprehensive Ranking System. Note that an Education Credential Assessment must be completed for both secondary and post-secondary educational credentials. Obtaining an Education Credential Assessment is a process that can be very time consuming, especially for those whose education was completed before the digitization of files. Presently, these third party service providers have a backlog of applicants to complete. Obtaining an ECA takes time and effort.
- 12.** Under Express Entry, the government's electronic system for selecting immigrants and matching employers with suitable applicants is neither transparent nor certain. In fact, the system is not even functional yet. This uncertainty makes Canada a less desirable place for companies to make investments or continue business operations as their ability to retain key employees in Canada cannot be ascertained in advance.
- 13.** Under Express Entry, the government has promised to process applications in 6-months or less. Timely processing of immigration applications is something this government has struggled to achieve. For example, with the recently created start-up visa, 6-month processing was advertised to potential applicants in Silicon Valley and was not achieved. The Globe and Mail reported on April 6 2015 that CIC can now envision Express Entry applications taking up to two years to process.
- 14.** For economic applicants who have pending applications for permanent residence filed before January 1, 2015, the processing of these applications

may be further delayed and take two or three times the processing time of those filed under Express Entry, as the government makes every effort to demonstrate that Express Entry is the best option for Canadian employers and prospective immigrants alike.

- 15.** The Express Entry system is still very new and the government is continually required to explain intricate question on how to complete the profile and application to representatives such as lawyers and consultants. Much of the detailed explanations are being disseminated to lawyers through the representatives email address. Please direct your questions about the system to: [ImmigrationRepresentatives@cic.gc.ca](mailto:ImmigrationRepresentatives@cic.gc.ca)