

## 7. IMMIGRATION

### 7.1 Overview

#### (1) Admission

Admission to and residence in Canada is a matter within the legislative sphere of the federal government and for all relevant purposes is governed by the *Immigration and Refugee Protection Act* (Canada) (the "Act") and the *Citizenship Act* (Canada). The extent of an individual's entitlement to enter or remain in Canada depends upon the degree of status given to that person by the Act. Levels of status in descending order of priority are those of Canadian citizenship, permanent residents, temporary residents, and refugees.

Although immigration generally falls within the jurisdiction of the federal government, the Act contains several provisions which require the Minister of Citizenship and Immigration to communicate with the provinces/territories on certain immigration matters, such as annual levels of immigration and procedures to assist integration. Under the Act, the federal government may also consult with its provincial/territorial counterparts on immigration policies in order to encourage cooperation and generate awareness on the provincial/territorial effects of its policies.

Most provinces/territories have existing immigration arrangements with the federal government which give them more control over immigration. The Provincial Nomination Program, for example, allows participating provinces/territories to play a larger role by directly sponsoring immigrants of interest to them. The broadest of these provincial/territorial agreements is the *Canada-Quebec Accord*, which enables Quebec to determine its level of immigration and choose independent immigrants according to its own points system. In November 2005, the governments of Ontario and Canada signed the first *Ontario-Canada Immigration Agreement*, which expands language training, settlement programs, and assists newcomers to successfully integrate more quickly into Ontario communities.

#### (2) Status

A Canadian citizen is a person who is born in Canada, was born outside of Canada to a Canadian citizen, or has been granted citizenship under the *Citizenship Act* (Canada) and has not renounced that status. Only a Canadian citizen has an absolute right to enter and remain in Canada.

A permanent resident is a person who has been granted permission to come into Canada to establish permanent residence but who has not become a Canadian citizen. A permanent resident has the right to enter and remain in Canada but may become disentitled to this right if he or she remains outside of the country for more than 3 years in the most recent 5 year period, or if a deportation order is made against him or her.

A temporary resident is a person who is lawfully in Canada or seeks to enter for a temporary purpose. This class of applicants includes visitors, students, workers and temporary resident permit holders, those persons who have been granted temporary entrance despite the fact that they remain inadmissible or are in non-compliance of the Act. Individuals from certain countries will require a temporary resident visa prior to entering Canada, while those from other nations may be exempt from this requirement. An individual's right to remain automatically ends when his or her visa expires or if he or she is found to be an undesirable.

Refugees and persons needing protection are people in or outside Canada who fear returning to their country of nationality or habitual residence. An individual seeking to enter Canada as a refugee must be a member of one of three classes. Convention Refugees Abroad are those who are unwilling to return to

his or her country of nationality or former habitual residence by reason of a well-founded fear of persecution. Members of the Country of Asylum Class are those who have been “seriously and personally affected” by armed or civil conflicts or human rights violations in his or her home nation. Individuals of the Source Country Class must be a national of a source country and must be residing there at the time of application. A refugee does not have an absolute right to enter Canada but while lawfully in the country has the right to remain unless a deportation order is made against him or her.

### **(3) Permanent Resident Applicants**

The Act creates several categories of applicants for permanent resident visas. For the most part, the applicable category will determine the selection criteria to which persons will be subject.

These categories include:

- (a) family class - Canadian citizens or permanent residents who are 18 years of age or older may sponsor:
  - (i) their spouses, common-law partners, or conjugal partners;
  - (ii) dependent children, including those adopted or those under 18 years of age whom the sponsor intends to adopt. Dependent children are defined as children that are either (1) under 22 years of age and are not married or in a common-law relationship, (2) full-time students since turning 22 years of age and financially supported by their parents or (3) financially supported by their parents since before the age of 22 because of any disability;
  - (iii) parents, grandparents, brothers, sisters, nephews, nieces, or grandchildren under 18 years of age who are orphans and are not married or in a common-law relationship;
  - (iv) any other relative if the sponsor has none of the above family members either in Canada or abroad; and
  - (v) accompanying relatives of the above.
- (b) refugees class - as defined above;
- (c) economic class - individuals may seek permanent residence under this class if they fall into one of the following categories:
  - (i) business immigrants: investors, entrepreneurs, or self-employed persons;
  - (ii) skilled workers and professionals: individuals who are capable of becoming economically established in Canada;
  - (iii) provincial nominees: persons whose admission is considered, pursuant to an agreement between the federal government and the government of the province in which the persons intends to locate, to be of significant benefit to the industrial development of that province;
  - (iv) Canadian experienced skilled workers: temporary foreign workers with at least two years of full-time skilled work experience in Canada, or a foreign graduate from a Canadian post-secondary institution with at least one year of full-time skilled work experience in Canada; and

(v) Quebec-selected skilled workers.

In recent years the Canadian government has recognized the need to find a more secure and convenient alternative to the IMM 1000 Record of Landing document, which was previously issued to those granted permanent resident status upon arrival in Canada. In 2003, this form was replaced with the Permanent Resident Card (the “PR” card), which is now the proof of status document utilized by permanent residents seeking to re-enter the country. The PR card addresses government concerns by providing increased safety and privacy features as well as resistance to forgery and alteration.

**(4) Visas**

Generally, persons seeking to enter and obtain status in Canada must appear before an immigration officer at a port of entry for the purpose of having their status determined and must be in possession of an unexpired visa. However, certain individuals, including those from the United States, Japan, and many nations of the European Union, are exempt from the visa requirement. This rule applies to citizens from more than 40 countries; thus it is important for the individual to consult the list of exempted nations prior to departure to verify whether it is necessary to obtain a visa.

The type of visa required will depend on the nature and duration of the visit. A single entry visa expires as soon as the visitor leaves Canada whether or not it would otherwise have been valid for a longer period of time, although a single entry visa may be used for repeated entries into Canada from the United States, provided that the individual does not enter another country. Multiple-entry visas are valid during the entire period for which they are stated to be in force regardless of the number of entries and departures. An appropriate case for the issuance of a multiple-entry visa would be to a person whose business affairs require numerous trips to and from Canada. The duration of a multiple-entry visa is in the discretion of the issuing officer but it is not uncommon for such visas to be issued for a period of 1 year or more.

A transit visa is required where the traveler will be in Canada for 48 hours or less while on route to another country. To obtain a transit visa the applicant must give specific evidence of his or her travel arrangements, such as travel tickets. Applications for all types of visas should be made at least 1 month before the intended departure date and scheduled entry into Canada.

**(5) Applications**

Subject to certain limited exceptions based upon compassionate and humanitarian grounds, applications for visas and permanent resident status must be filed at a Canadian visa office in the applicant’s country of nationality or residence or in the locality where the individual has been legally admitted.

**(6) Priorities**

The Canadian government has recently implemented measures to reduce the waiting period for qualifying skilled immigrants. Effective February 27, 2008, the applications of qualifying immigrants applying under the skilled workers category will be fast-tracked to fill 38 high-demand occupations, including in health care, the skilled trades, finance and resource extraction.

Apart from the fast-tracking applied to qualified skilled workers, there is no set priority for the processing of applications of immigrant visas, as processing occurs on a first-come, first-serve basis. There is, however, a clear policy objective that prioritizes family reunification as well as on the economic contribution of immigrants, therefore, preference is given to spouses and dependent children, followed by economic class applicants and other family class applicants.

## (7) Processing Times

The processing of applications for permanent residence vary significantly with the type of application as well as the visa office where it is processed. Citizenship and Immigration Canada posts annual statistical information on its website showing the number of months that were required to approve or refuse various applications at visa offices around the world for the previous year. This statistical data, however, can only serve as a guideline and does not necessarily represent service standards for that visa office.

It is important to note that post-9/11, extensive background and security checks can add significant delay to some applications. Applicants applying from some visa offices will face more extensive security screening, however, other factors can also affect the length of time to complete security enquiries including whether an applicant has lived in multiple countries, whether they have served in the military, or whether they have held any position within the government.

The following represent the 2007 Guidelines that can serve as an indication of the length of processing for the various permanent residence applications based on an average time required to finalize applications in all visa offices in all regions:

- (a) Family Class (Federal): 4 months - 9 months \*  
(Spouses and Partners)
- (b) Family Class (Federal): 3 months - 10 months \*  
(Dependent Children)
- (c) Family Class: 7 months - 21 months \*  
(Parents and other relatives)
- (d) Business Class (Federal): 2.5 years - 5.5 years
- (e) Business Class (Quebec): 10 months - 2 years
- (f) Skilled Workers (Federal): Fast-tracked - no statistical data available
- (g) Skilled Workers (Quebec): 6 months - 1.5 years
- (h) Provincial Nominees: 5 months - 11 months

\* There is a two-step process involved in family class applications: the assessment of the sponsorship application in Canada and the assessment of the permanent residence application outside Canada by the visa office. There are separate processing times for each of these two steps. The time-lines above reflect the length of time a visa office finalizes family class applications. The time-lines below represent the in-Canada portion of the processing time of a sponsorship application, which must be added to the processing times of the visa office portion noted above to determine the total length of time a family class application can reasonably be expected to be finalized:

- (a) Family Class (Spouses and Dependent Children): 37 days  
(as of January 27, 2009)
- (b) Family Class (Parents and Grandparents): 2.3 years

(as of October 30, 2006)

Due to the growing backlog of parental sponsorships, the estimated waiting period for processing of a parental sponsorship is estimated to have increased than the numbers posted as of October 30, 2006. It is apparent that sponsorship of parents and grandparents are given the lowest priority for both the in-Canada and the outside-Canada portion of the processing of permanent residence applications.

### **(8) Current Trends in Immigration Policies**

With the recently implemented Act, the Government of Canada seeks to balance the need to attract skilled workers, reunify families and protect refugees while guarding against potential abuse of the system. As stated above, there is a renewed emphasis that has been placed on the economic contribution of future immigrants, resulting in measures aimed to reduce the waiting period for qualifying skilled workers. The government's 2009 immigration targets remain intact with a goal of admitting between 240,000 to 265,000 new permanent residents to Canada.

Canada also recognizes that it has a social responsibility to promote family reunification where possible. Underlying this rationale is the desire to shift the economic burden of settlement of immigrants from the tax-paying sector to the sponsors of family class immigrants. Those sponsoring the immigration of their family members or relatives are required to assume financial responsibility by providing from 3 to 10 years of assistance in order to aid in the immigrant's settlement in Canada.

At the same time, recent policy changes have sought to increase the security of the system and protect against potential abuse. Measures such as the introduction of the new PR card, harsher penalties for human trafficking, and better defined inadmissibility provisions give added protection to the system.

## **7.2 Business Immigrants**

The federal and provincial/territorial governments have services in place targeted at successful persons looking to participate in business activities and settle in Canada. The Business Immigration Program has been developed to encourage the admission of such individuals. While this program pertains to most places in Canada, it is important to note that under the *Canada-Quebec Accord*, the Province of Quebec operates a separate business immigration process of its own with rules that may differ from its federal counterpart.

As discussed earlier, there are three classes of business immigrants in Canada: entrepreneurs, investors and self-employed persons. An individual may only apply for consideration under one class, regardless of whether he or she also meets the requirements of others. In addition to the criteria listed below, all applicants will also be awarded points according to certain selection factors and must earn at least the threshold number in order to become eligible. The selection criteria, explained in more detail under Section 7.7(b), includes level of education, business experience, language skills, age, and ability to adapt. In 2009, the pass mark for all business immigrants has been set at 35 out of a possible 100 points, although this is subject to change at the discretion of the Minister of Citizenship and Immigration.

### **(1) Entrepreneurs**

An "entrepreneur" is an immigrant who:

(a) during the 5 year period prior to the application, has managed a qualifying business and controlled a percentage of equity of a qualifying business for at least 2 years;

(b) has a net worth of at least \$300,000; and

(c) intends and has the ability to control 33% or more of the equity of a qualifying Canadian business, provide ongoing management of the business, and create at least one full-time job equivalent for a Canadian citizen or permanent resident other than for the entrepreneur and his or her dependants. A qualifying Canadian business is a legal enterprise that is operated in Canada by an entrepreneur but does not include those carrying on business with the intent to generate investment income such as dividends or capital gains.

As well, the entrepreneur must meet the general requirements under the economic class:

(a) demonstrate proof that they have the financial means to support themselves and any dependents after arriving in Canada;

(b) obtain a minimum of 35 points in the selection grid; and

(c) meet medical and security requirements.

Those individuals who qualify will be granted conditional immigrant visas for a period of 2 years. The entrepreneur is required during the period between 18 and 24 months after the day he or she became a permanent resident to provide evidence of his or her attempt to meet the conditions. These obligations must be fulfilled for at least 1 year within the first 3 years of becoming a permanent resident.

## **(2) Investors**

The "investor" category is intended for successful business persons who wish to immigrate to Canada and invest in an enterprise here but who do not wish to participate in its management. The Canadian government's requirements for an investor are that:

(a) during the 5 year period before the date of application, the investor must qualify under one of the following categories:

i) managed a qualifying business and controlled a percentage of equity of a qualifying business for at least 2 years, or

ii) managed at least 5 full-time job equivalents per year in a business for at least 2 years, or

iii) must have a combination of one year of experience under the first point and one year of experience described in the second point above.

(b) the investor must have a legally obtained minimum net worth of \$800,000; and

(c) the investor must make an irrevocable minimum investment of at least \$400,000 for 5 years, which is fully guaranteed by the participating provinces and territories and repaid at the end of this period without interest.

As well, the investor must meet the general requirements under the economic class:

(a) demonstrate proof that they have the financial means to support themselves and any dependents after arriving in Canada;

(b) obtain a minimum of 35 points in the selection grid; and

- (c) meet medical and security requirements.

All investments are to be made in projects which have been approved by the federal government in consultation with the particular province. The investment is paid to the Receiver General for Canada, with the funds channeled to the provinces and territories to be used for economic development and job creation. Investments are fully guaranteed by the provinces and territories that participate in the Immigrant Investor Program. During the 5 year period, the investment is under the full control of the provinces/territories. Under the *Canada-Quebec Accord*, the Province of Quebec operates its own immigrant investor program. All investors in the Quebec program must intend to live in Quebec and must be selected by Quebec.

The Immigrant Investor Program allows applicants to arrange financing through several different methods. The individual has the option of pledging the government-issued debt instrument to a financial institution of his or her choosing. A second option is to devise a financing plan with an approved financial institution and member of the Canada Deposit Insurance Corporation, all of whom have entered into agreements with CIC to facilitate the application process.

### **(3) Self-Employed Persons**

A “self-employed person” is an immigrant who:

- (a) for at least two one-year periods during the 5 year period before the date of application was self-employed in athletics or cultural activities, or participated in these activities at the world class level, or had farm management experience; or
- (b) intends and is able to establish a business that will create an employment opportunity for himself or herself and will add a significant contribution to Canadian athletics or cultural activities, or intends and is able to purchase and manage a farm in Canada.

As well, the self-employed applicant must meet the general requirements under the economic class:

- (a) demonstrate proof that they have the financial means to support themselves and any dependents after arriving in Canada;
- (b) obtain a minimum of 35 points in the selection grid; and
- (c) meet medical and security requirements.

Examples of such persons include farmers, artisans, sports personalities, athletes, actors, dancers, directors, musicians, librarians, authors, photographers, journalists, and operators of small business outlets which certain communities may require.

## **7.3 Skilled Workers**

Skilled workers have education, work experience, knowledge of English or French and other abilities that will help them to establish themselves as permanent residents in Canada. Effective February 27, 2008, the applications of those qualifying under the skilled worker category will be fast-tracked. For applicants who applied before February 27, 2008, the application will be processed according to the rules that were in effect at that time. Currently, the recent measures are expected to reduce the wait for the processing of skilled workers to between six and 12 months from the current five to six years. A skilled

worker must meet one of the following minimum requirements for eligibility under this program:

- (a) an offer of arranged employment, OR
- (b) a foreign national who has been living legally in Canada for one year as a temporary foreign worker or an international student, OR
- (a) a skilled worker who has at least one year of experience in at least one qualifying occupation.

If the application is eligible for processing, the following minimum requirements to qualify as a skilled worker must be met:

- (a) during the last 10 years, have at least 1 year of full-time, paid work experience in a job that is classified as Skill Type 0 or Skill Level A or B on the National Occupational Classification List and that is not part of a list of restricted occupations that cannot be used as work experience. The list of qualifying jobs is extensive and includes architects, bankers, engineers, carpenters, electricians, lawyers, professors, and senior government officials;
- (b) demonstrate proof that they have sufficient funds to support themselves and any dependents after arriving in Canada have sufficient funds to support himself or herself and his or her dependents for at least 6 months after arrival in Canada (if employment has been secured, the applicant need not show these funds exist); and
- (c) obtain a minimum of 67 points in the selection grid applicable to skilled workers; and
- (d) meet medical and security requirements.

The rules governing immigration to Canada as a skilled worker are modified from time to time; thus, before beginning an application it is essential to verify that the rules being followed are current and up to date.

#### **7.4 Canadian Experience Class**

Announced on September 5, 2008, the Canadian Experience Class (CEC) is a new avenue of immigration for certain temporary foreign workers and foreign student graduates with professional, managerial and skilled work experience. Unlike other programs, the Canadian Experience Class allows an applicant's experience in Canada to be considered a key selection factor when immigrating to Canada. The program applies to those who plan to live outside of Quebec and to temporary foreign workers with at least two years of full-time qualified skilled work experience in Canada, or foreign graduates from a Canadian post-secondary institution with at least one year of full-time qualified skilled work experience in Canada. Skilled work experience includes, according to the Canadian National Occupational Classification (NOC), managerial, professional or technical occupations and skilled trades. Those eligible can apply while working in Canada or within one year of termination of employment in Canada.

Some international students and temporary foreign workers living legally in Canada may be eligible to apply to stay permanently in Canada under either the Federal Skilled Worker Program or the CEC. There are some differences between the criteria for eligibility for the two programs such as the length of time an applicant has stayed in Canada. As well, while a federal skilled worker applicant must be assessed against the points system for factors like education, language, work experience, age and adaptability CEC applicants must meet specific minimum requirements for language ability, Canadian work experience and, in some

cases, Canadian education.

## **7.5 Provincial Nominees**

The Provincial Nomination Program gives the provinces/territories more control over the immigration process by allowing the direct sponsorship of applicants of interest to them in an expedited manner. Most Canadian provinces/territories have formalized agreements with the federal government to help employers recruit qualified employees, whether they are abroad or in Canada with valid status (as temporary foreign workers, international students, or visitors), as well as their immediate family members, on a first-come-first-serve basis subject to program criteria. Generally, those who will be recruited possess specialized skills and have a greater chance at successful economic establishment in the province/territory.

Since the Provincial Nominee Program is an employer-driven program, before individuals who wish to seek permanent residence under the program can apply to the province, the employer must first initiate the process by nominating an individual to Citizenship and Immigration Canada (CIC). All successful nominees who must then apply to CIC for permanent residence. A CIC officer will then assess the application based on Canadian immigration regulations, including subjecting the applicant to medical checks and background/security enquiries. Generally, applicants must also demonstrate proof of funds to support themselves after arriving in Canada, if applying from overseas. Provincial nominees are not assessed on the six selection factors of the Federal Skilled Workers Program.

As a provincial nominee, the individual generally benefits from a faster processing time on his or her application. While federal applications have a typical processing time of 18 months or more, under this category processing time may be reduced to between 5 and 11 months, depending on the visa post overseas, and background and medical checks.

## **7.6 Spouses and Children**

Although spouses, common-law partners and children over the age of 18 years may be required to complete separate immigration forms, they are included in the application of the principal candidate, and thus their admission into Canada, as well as the admission of any other dependent children, is contingent on the principal candidate obtaining an immigrant visa. All dependent children must be included in the application, regardless of whether they intend to accompany the candidate, as each dependent must be deemed admissible for the principal candidate to be granted permanent residence status. If dependent children reside outside of the country at the time the application of the principal candidate is made, they will be issued visas that will allow entry into Canada and will be granted permanent resident status upon arrival.

## **7.7 Selection Criteria**

### **(1) Points System**

Except for members of the family and refugee classes, all applicants are subject to assessment under the "points system" which professes to be an objective means of determining whether an immigrant and his or her dependents (if applicable) will be able to become successfully established in Canada. This assessment review is normally conducted at the visa office outside of Canada where the

application was filed.

**(a) Skilled Workers**

In addition to meeting the other qualifying criteria of their respective classes, individuals must also obtain a sufficient number of points to meet the pass mark threshold. Generally, those applying as skilled workers are assessed using 6 selection factors which include:

(i) education (25 points): maximum points can be earned if the individual has at least 17 years of full-time study and a Master's Degree or PhD;

(ii) proficiency in the English or French language (24 points): full points can be received for high proficiency in listening, reading, writing and speaking in both English and French;

(iii) work experience (21 points): maximum points can be earned if the individual has 4 years of experience or more;

(iv) age (10 points): full points can be acquired if the individual is between 21 and 49 years of age at the time the application is made;

(v) arranged employment in Canada (10 points): full points can be received if the individual has a permanent job offer confirmed by Human Resources and Skills Development Canada ("HRSDC"), has a temporary work permit issued after receipt of a confirmation of a job offer from HRSDC, or has a temporary work permit that is exempt from the confirmation requirement due to international agreement, the job being a significant benefit to Canada, or public policy reasons; and

(vi) adaptability (10 points): full points can be earned if the individual shows at least 2 of the following:

(A) he or she has family in Canada;

(B) he or she has a spouse with a Master's Degree or PhD and at least 17 years of full-time studies;

(C) he or she has a minimum of 1 year full-time authorized work or 2 years full-time authorized post-secondary study in Canada; or

(D) he or she has received points under the Arranged Employment in Canada criteria.

The maximum points which can be earned is 100, and as previously mentioned, the current pass mark is 67 points. Skilled workers applying as provincial nominees are not assessed by these 6 factors but rather by those set by the specific provinces/territories.

**(b) Business Immigrants**

Similarly, individuals applying as investors, entrepreneurs or self-employed persons are assessed according to:

(i) business experience (35 points): maximum points may be obtained if the individual has 5 years of experience or more;

(ii) education (25 points): maximum points may be earned if the individual has at least 17 years of full-time study and a Master's Degree or PhD;

(iii) proficiency in the English or French language (24 points): full points may be received for high proficiency in listening, reading, writing and speaking in both English and French;

(iv) age (10 points): full points may be acquired if the individual is between 21 and 49 years of age at the time the application is made;

(v) adaptability(6 points): investors and entrepreneurs can gain full points if he or she has come to Canada on business during the past 5 years or has taken part in joint federal-provincial business immigration initiatives. Self-employed individuals may achieve maximum points if he or she can show at least 2 of the following:

- (a) a spouse or common-law partner with higher education;
- (b) he or she has worked full-time in Canada for at least one year, or has obtained a Canadian post-secondary educational credential of at least 2 years since turning 18, or has an accompanying spouse or common-law partner who has done so;
- (c) he or she has family in Canada, or has an accompanying spouse or common-law partner who has family in Canada.

Again, for all business immigrants the current pass mark is set at 35 out of 100 points.

## **(2) Family Class Members/Refugees**

Members of the family class and convention refugees are not subject to assessment under the points system. Those applying under the family class will be granted permanent resident status if their sponsor can undertake to provide for their welfare and the sponsor is able to fulfil that undertaking. An individual who qualifies as a Convention Refugee Abroad or as a member of the Country of Asylum or Source Country Classes is admissible if he or she passes criminal, medical and security checks. In addition, his or her ability to adapt to Canadian life may be assessed.

## **7.8 Loss of Permanent Resident Status**

A person loses his or her status as a permanent resident when a deportation order comes into force. Deportation orders are made against a person who has committed a serious criminal offence, has breached the terms of any condition attached to the granting of permission for him or her to enter Canada, or has obtained admission by virtue of fraudulent misrepresentation.

In addition, in order to retain permanent resident status the individual must be physically present in Canada for at least 730 days (2 years) in the most recent 5 year period. An individual who is outside of the country for an extended length of time may also accumulate residency days if he or she:

- (a) is accompanying a Canadian-citizen spouse or common-law partner, or is a child accompanying a Canadian-citizen parent;
- (b) is a full-time employee of a Canadian business, the Public Service of Canada or a Canadian province. or;
- (c) is the accompanying spouse, common-law partner or child of a permanent resident who is outside of Canada and who is a full-time employee of a Canadian business, or the Public Service of Canada or a Canadian province.

Failure to accumulate a sufficient number of residency days may place the individual's permanent resident status at risk, as the Act grants CIC the discretion to revoke such status if it deems the above conditions have not been met.

## **7.9 Employee Transfers**

Frequently, a non-resident employer having a branch or subsidiary organization in Canada wishes to transfer an employee to Canada to fill a specific job opening. Generally, no person other than a Canadian citizen or permanent resident can engage or continue in employment in Canada without a valid work permit. There are numerous exceptions to this rule (for example, diplomats, performing artists, athletes, referees, etc.) but the most commonly used is the permanent employee of a corporation or other organization operating outside of the country who is coming to or is in Canada for a period of 90 days or less for the purpose of consulting with other employees or members of that foreign enterprise or for the purpose of inspecting a Canadian branch office or headquarters on behalf of that foreign enterprise.

If an individual does not qualify for temporary admission to Canada as a business visitor or intra-company transferee, or in another foreign worker approval-exempt category, the intended position must be approved by Human Resources and Skills Development Canada ("HRSDC"). If at all possible, an individual should be placed in a category that does not require approval from HRSDC, as the standard for obtaining this kind of approval can be quite challenging and time-consuming. Positions will only be approved where it can be shown that there are no qualified Canadians available to assume the position. For HRSDC to be satisfied of this, the employer must generally undertake an extensive search through advertising and recruitment.

One exception to the validation requirement is an Intra-Company Transferee who is needed in Canada for a temporary period. To be considered under this class, the individual must be a senior executive, manager, or a person with specialized knowledge, and must have a letter from a business carrying on activities in Canada identifying him or her as an employee of a foreign operated branch or subsidiary of the company, the nature of the job offer, and the time period of the transfer. In addition, the individual must have been continuously employed with the foreign company seeking to transfer that employee to Canada for a period of not less than 1 year within the last 3 years. The executive can obtain authorization at a port of entry, but may wish to file an application at a visa office prior to his or her arrival so as to avoid delays upon entry. Authorizations are typically granted for a 1 year period for specialized knowledge workers and up to 3 years for executives and senior managers subject to extensions under certain circumstances. Eligible spouses and common-law partners of Intra-company Transferees may also obtain work permits without requiring the usual labour market opinion and resulting temporary foreign worker approval.

## **7.10 Facilitated Processing of Employment Authorizations for Information Technology Workers**

Foreign temporary workers seeking employment authorizations can have them issued under the special category for Information Technology Workers, under which immigration officers can issue employment authorizations to workers in certain information technology fields without the employer having to obtain a validation from the local HRSDC specific to the job offer. Instead, a national confirmation letter is issued which attests to a shortage in permanent resident or Canadian citizen applicants for certain IT positions. The 7 information technology fields which have been nationally validated are as follows: senior animation effects editor; embedded systems software designer; MIS software designer; multimedia software

developer; software developer-services; software products developer; and telecommunications software designer. Through this process, the entrance delay for these skilled workers has been significantly reduced.

## **7.11 North American Free Trade Agreement**

### **(1) General**

The North American Free Trade Agreement ("NAFTA") between Canada, the United States and Mexico provides for the temporary entry of business persons to each of those three countries, so long as the existing immigration requirements for such entry is met. Under this agreement, the individual is allowed to by-pass the usual HRSDC validation of employment authorization generally required for foreign workers.

"Business persons" are defined as citizens of Canada, the United States or Mexico who are engaged in the trade of goods or services or in investment activities. The four categories of business persons are:

- (a) business visitors;
- (b) investors and traders;
- (c) professionals; and
- (d) intra-company transferees.

### **(2) Business Visitors**

Business visitors from NAFTA partners may be allowed short-term entry into Canada provided that the individual is engaged in specific occupations or professions outlined under NAFTA, the principal source of remuneration and business remain outside of Canada, and the individual has no intent to enter the Canadian labour market. Applications for this status may be filed immediately prior to travel at a port of entry.

### **(3) Investors and Traders**

A business person may enter Canada, the United States or Mexico as an investor or trader, but cannot be granted status under both.

Individuals intending to carry on substantial trade in goods or services principally between Canada and the territory of the country of which the business person is a citizen may apply for trader status. The employment opportunity must be one involving supervisory or executive capacity or must require essential skills.

Business persons wishing to direct or develop the operation of an enterprise in which he or she has invested or who are actively in the process of investing a substantial amount of capital may apply for investor status. If the individual is an employee, he or she must act in a capacity that is supervisory, executive or involves essential skills. In order to obtain an investor visa, an individual or corporation must place a substantial amount of funds at risk in a Canadian enterprise. There is no maximum or minimum amount of funds to be invested. Rather, what is considered "substantial" is determined by using a proportionality test, in which the amount invested is weighed against either the total value of the particular

enterprise in question, or the amount normally considered necessary to establish a viable enterprise of the nature contemplated.

Individuals seeking trader or investor status should complete and submit their applications at a visa office. Work permits may be granted for a maximum period of 1 year, with the possibility of extension for a further 2 years.

**(4) Professionals**

As a result of recent amendments, individuals engaged in business activities at a professional level will be granted admission to Canada, the United States or Mexico for up to 3 years, rather than the previous limit of 1 year and are renewable in 3 year increments, subject to compliance with other immigration regulations concerning residence. In order to qualify as a "professional", the business person must be engaged in one of the professions set forth under NAFTA, must have prearranged employment with a Canadian employer, and must have sufficient documentation to establish qualifications in one of the listed professions. This list is exhaustive and may be changed from time to time by agreement between the three partner nations.

Applications for professional status including all supporting documentation can be made at a port of entry or at a visa office prior to departure for Canada. In addition, Mexican and American citizens who have been admitted into Canada as temporary residents are also eligible to apply for professional status.

**(5) Intra-Company Transferees**

Business persons who are employed by an enterprise in a managerial or executive role or in a capacity which involves specialized knowledge may be transferred to that same enterprise's operations, or to a subsidiary or affiliate thereof, in another Party country. Business persons must have been employed continuously for 1 year out of the preceding 3 years prior to the transfer in order to qualify. Interestingly, there is therefore a somewhat anomalous situation in that an intra-company transferee applying under NAFTA must have 1 year of employment with the corporation while an applicant under the existing Canadian immigration law described earlier does not have to meet this requirement. Applications may also be made at a visa office prior to departure or at a port of entry.

The category of intra-company transferees is the only class upon which NAFTA imposes a limit on the total length of time permitted for employment. Admission may be granted for an initial period of 3 years. However, the total stay for a person allowed entry under this category cannot exceed 7 years if the applicant is employed in a managerial or executive role and cannot exceed 5 years if he or she is to serve in a capacity that requires specialized knowledge.

**7.12 Temporary Entry Under the General Agreement on Trade In Services**

**(1) General**

On January 1, 1995, an Agreement Establishing the World Trade Organization came into force and incorporated the provisions of the General Agreement on Trade in Services (the "GATS") which provide for similar rules to temporary entry rules under NAFTA but apply to a wider range of countries. As with NAFTA, individuals seeking to enter Canada under the GATS may do so without having to obtain an HRSDC validation of employment authorization. In order to gain entry pursuant to the provisions of the GATS, a business person must:

- (a) be a citizen of a member nation to the GATS, or be a person who has been accorded the right of permanent residence in a member nation;
- (b) reside in a member nation;
- (c) be employed in a service sector listed under the GATS which include business, communications, construction, distribution, environmental, financial, tourist and travel-related and transport services; and
- (d) be described in one of three categories of business persons, i.e. Business Visitors, Intra-Company Transferees or Professionals.

**(2) Business Visitors**

"Business Visitors" under the GATS are defined as individuals who "stay in Canada without acquiring remuneration from within Canada and without engaging in making direct sales to the general public or supplying services, for the purpose of participating in business meetings, business contacts including negotiations for the sale of services and/or other similar activities including those to prepare for establishing a commercial presence in Canada."

The Business Visitor category is similar to that under NAFTA but somewhat more restrictive. It does not permit entry for the sale of goods but rather only for the sale of services and includes activities related to the start-up or establishment of a business in Canada to deliver such services. Business visitors coming to Canada for short-term business visits should carry a letter from their employer confirming their continuing employment with the foreign company and indicating the duration, purpose and temporary nature of their visit to Canada.

**(3) Intra-Company Transferees**

"Intra-Company Transferees" under the GATS must be executives, managers or possessors of specialized knowledge and must have worked for at least 1 year outside of Canada for their current employer. The Canadian company must be in the service sector as defined by GATS, and there is a cap of 3 years imposed on the total duration of the Canadian employment.

The intra-company transfer provisions of the GATS also state that the Canadian enterprise must be engaged in a substantial business operation, that the current employer and the Canadian company have a parent, branch, subsidiary or affiliate relationship, and that the applicant has been employed in a similar position by his or her current employer for at least 1 year immediately prior to the date of application.

**(4) Professionals**

As under NAFTA, a GATS professional is a person "who seeks to engage, as part of a services contract obtained by a company in another member nation, in an activity at a professional level in a profession set out in the GATS provided that the person possesses the necessary academic credentials and professional qualifications which have been duly recognized, where appropriate, by the professional association in Canada." This class is far more restrictive under the GATS than under NAFTA, as GATS professionals must have their academic credentials and/or professional qualifications recognized by the professional association in Canada before entry can be granted and must have been granted a licence, if necessary. GATS professionals are limited to admission for a maximum of 3 months in a 12 month period. Professions that are listed under this agreement are engineers, agrolgists, architects, land surveyors, geomatics and forestry professionals, foreign legal consultants, urban planners and senior computer specialists.

### **7.13 Canadian Citizenship**

A certificate of Canadian citizenship may be granted to any person who, not being a citizen, makes an application for that purpose and satisfies a citizenship judge that he or she:

- (a) has attained the age of eighteen years;
- (b) has been lawfully admitted to Canada for permanent residence and has, within the 4 years immediately preceding the date of his or her application, accumulated at least 3 years of residence in Canada;
- (c) has an adequate knowledge of English or French;
- (d) has an adequate knowledge of Canada and of the responsibilities and privileges of citizenship; and
- (e) is not ineligible for citizenship because he or she is under a removal order, is currently charged with a serious criminal offence or has been convicted of such an offence in the past 3 years, is in prison, is on probation or on parole, is being investigated for or has been convicted of war crimes, or has had citizenship revoked during the previous 5 years.

To apply for citizenship, children under the age of 18 must be permanent residents in Canada. A parent applying on his or her child's behalf must be a Canadian citizen or must be applying for citizenship as a family. Canadian passports are only issued to persons who have been granted Canadian citizenship and will not be given to permanent residents.

### **7.14 Settlers' Effects**

Goods imported by a settler for his or her household that were actually owned, possessed and used by the settler prior to departure may enter Canada free of both customs duties and goods and services tax. The determining factor in qualifying as a settler is arrival in Canada as a permanent resident. The goods to which this exemption applies include household goods and furnishings, personal effects, motor vehicles, jewellery, works of art and other similar property imported for the settler's use only and not for use in a business or manufacturing establishment.

There is no requirement that the goods arrive in a single shipment. Those that are to follow a settler's entry into Canada may still be eligible for duty-free and tax-free treatment so long as the items were reported by the settler upon arrival.

It is recommended that a detailed list of all items be produced together with evidence of title thereto when the first shipment is cleared through customs. It should be noted that the settler will be liable for customs duty and capital gains taxes on any imported personal and household effects which are sold or given away or have been converted to commercial use within 1 year of arrival in Canada. In addition, any physical importation of currency equal to \$10,000 or more must be reported to Canada customs.

### **7.15 Corporate Immigration**

Both the *Canada Business Corporations Act* and the *Business Corporations Act* (Ontario) provide that any corporation incorporated under the laws of another jurisdiction may be continued under the federal or provincial legislation, as the case may be, so long as the laws of the jurisdiction where the corporation was incorporated so permit. The effect of continuance is that the corporation is deemed for all relevant purposes to have been incorporated in the jurisdiction in which it is continued, it retains all of its

assets and it remains subject to all of its liabilities and obligations.

Continuance may be useful in circumstances where a state of emergency exists in the country where the non-resident corporation was incorporated (for example, invasion, expropriation, etc.) and either the corporation has assets in Canada or the disposition of its assets would create logistical difficulties and/or undesirable tax consequences.

#### **7.16 Enemy Aliens**

An "alien" has been broadly defined as a person who owes allegiance to a foreign government. An "enemy alien" is an alien whose foreign government is in a state of hostility or war with Canada. Enemy aliens are afforded very few rights under Canadian law and are subject to having their property placed under the control of a government-appointed trustee. While the risk of such compulsory acquisition cannot be entirely eliminated, a carefully planned structure can reduce this risk. Fortunately, Canada has not been in a state of hostility or war with any country since the end of the Second World War, but the non-resident investor should consider the risk of invasion in his or her country of origin and make emergency arrangements in advance for the proper administration of his or her Canadian affairs while residing in an enemy-occupied territory.

#### **7.17 Abuses**

Two types of common abuses by entrepreneurial investors have been identified: the failure to actually make the investment submitted to support an immigration application and the failure of the immigrant to actually reside in Canada for 3 years before applying for Canadian citizenship. We expect that the immigrant will be obliged to document his or her Canadian business investment and report to provincial officials on a regular basis. There will be more bureaucracy to contend with but the *bona fide* entrepreneur or investor need not be concerned by the process. In light of terrorism concerns, there will also likely be increased security checks on persons who enter Canada as permanent residents but do not necessarily live in the country most of the time.

#### **7.18 Conclusion**

Overall, Canada has a very practical approach to admitting new immigrants. Although family re-unification remains a strong factor in the admission process, Canada's immigration policies are particularly favourable to the skilled immigrant who pays taxes and does not use social assistance. As far as temporary employment in Canada is concerned, existing free trade agreements set out fairly liberal rules for seasoned executives of non-resident corporations to be transferred to Canada with relative ease.

