

# Mobility: immigration alert

December 2018

## Canada

### 2018 review of key immigration developments

#### Background

2018 has been a busy year from a Canadian immigration perspective, and we have seen a number of positive changes, as the Government has continued its focus on facilitating the entry of skilled foreign talent to Canada while safeguarding Canadian borders against security threats. We have highlighted below some key immigration developments for 2018.

#### Expansion of Canadian Biometrics program

Earlier this year, Immigration, Refugees and Citizenship Canada (IRCC) announced an expansion to the biometric collection requirements for foreign nationals' travelling to Canada both on a temporary and permanent basis. As a result of the expansion, most foreign nationals (with a few exceptions, including US citizens seeking temporary residence to Canada) between the ages of 14 and 79 seeking either temporary or permanent residence to Canada are now required to provide biometrics data. Biometrics are collected in support of an application for Canadian permanent residence, a work permit, or a study permit. Biometrics are also collected from visitors who require a visa to travel to Canada. U.S. citizens applying for work or study permits are exempted from this requirement.

The biometrics expansion program is being phased in with the first phase launched on July 3, 2018 requiring foreign nationals seeking entry to Canada from Europe, the Middle East and Africa to provide biometrics information. The second phase is scheduled to roll out on December 31, 2018, for foreign nationals from Asia, Asia Pacific and the Americas.

The biometric data collected includes fingerprints and a digital photograph which is stored by the Royal Canadian Mounted Police on the National Repository and checked against immigration and criminal records to verify and establish the identity of foreign nationals entering Canada. Additionally, the biometrics-based information may also be shared with the governments of the U.S., Australia, New Zealand and the United Kingdom.

#### Updates to Global Talent Stream Pilot

To mark the one-year anniversary of the Global Talent Stream (GTS), following a number of stake holder consultations, Employment and Social Development Canada (ESDC) announced its first updates to the two Labour Market Impact Assessment (LMIA) related categories. For Category A, ESDC restricted the eligibility requirements for this category in response to some employers over using the category. ESDC has revamped the category for the program to be applicable to those very specialized foreign nationals who are considered the "unicorns" of the industry.

For Category B, the Global Talent Occupation list was updated in response to economic shifts in the labour market to include new "in-demand" occupations and modifying prescribed experience and skills for certain occupations. There was also the removal of NOC 2241 "Electrical and electronics engineering technologists and technicians" due to it no longer being considered an 'in-demand' occupation based on Service Canada's analysis of the labour market.

Stakeholder consultations are underway for expanding the GTS pilot program. We anticipate that recommendations will be presented to the Minister for consideration in early 2019.

#### New impaired driving legislation to impact foreign nationals, permanent residents seeking entry or remaining in Canada

On June 21, 2018 the Canadian government passed legislation that impacts the impaired driving provisions in the *Criminal Code*, including an increase to the maximum sentence of impaired operation from five years to ten years. As a result, the driving under the influence (DUI) offence has now been elevated to "serious criminality" pursuant to Canada's



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*Immigration and Refugee Protection Act.* Foreign nationals with a DUI offence from their home country will now face additional admissibility challenges travelling to Canada. Permanent Residents convicted of a single DUI offence either abroad or within Canada will now be at risk of losing their Permanent Resident status and being deported from Canada.

Once the legislation comes into effect, foreign nationals who are convicted outside of Canada of an offence that equates to an impaired driving conviction under the *Criminal Code* will no longer be eligible for deemed rehabilitation under the *Immigration and Refugee Protection Act*. Under the current legislation, deemed rehabilitation allows individuals to overcome their prior conviction in instances where there is a single DUI conviction and at least 10 years have passed since the completion of all sentencing requirements and imposed conditions associated with the offence. Under this new legislation, to overcome inadmissibility, impacted foreign nationals would either have to be successful in obtaining a Certificate of Rehabilitation or a Temporary Resident Permit in order to be lawfully admitted to Canada.

For Permanent Residents, once effective, the new legislation has far reaching and severe consequences. By heightening the DUI offence to serious criminality, Permanent Residents are now at risk of losing their permanent residence status and being deported. This applies to conviction arising out of a single offence either within or outside of Canada. Additionally, as the impaired driving conviction would now fall under the serious criminality sections of the *Immigration and Refugee Protection Act*, there are no appeal rights for Permanent Residents convicted of a DUI offence.

This legislation will come into effect on December 18, 2018.

### **The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)**

The CPTPP is the latest international free trade agreement that Canada has ratified and will come into effect January 1, 2019. The free trade agreement between Canada and 10 other countries -- Australia, Brunei, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam -- contains provisions that will facilitate the entry of business persons under new business visitor and work permit categories.

Three main categories of business persons will benefit from the CPTPP temporary entry provisions: Business Visitors, Intra-Corporate Transferees (including management trainees), Investors and Professionals and Technicians.

### **USMCA - the new "NAFTA"**

From a political perspective, 2018 was filled with lots of excitement and speculation related to the renegotiation of NAFTA. At the end of September 2018, USMCA was agreed upon. Based on the renegotiations, no changes were made to the temporary foreign worker provisions.

### **Conclusion**

2018 was a year with positive developments on the Canadian immigration front. These developments have continued to reinforce the Government's commitment to position Canada as an economic leader by attracting top talent from around the world and attract global companies relocated to Canada. We expect the momentum to continue in 2019 as we head into an election year.

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