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## Canada – Recent Immigration and Work Permit Developments

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## flash Alert

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This year is the second full year of the Express Entry system of processing permanent residence applications in Canada, which was launched by Immigration, Refugees and Citizenship Canada ("IRCC" – formerly *Citizenship and Immigration Canada* "CIC") in January 2015. There are some important developments and reminders for 2016 which we wish to bring to your attention. In addition, we highlight other recent developments with respect to provincial nominee and skilled worker programs and new entry requirements for Canada.

### Why This Matters

In light of the various developments and reminders we discuss in this newsletter, global mobility advisers, immigration counsel, and globally mobile employees coming to Canada need to stay informed and take action to foster proper compliance with the rules and mitigate the risk of penalties and other sanctions.

This newsletter covers several aspects of Canada's work permit and immigration programs that employees coming into Canada and their employers need to consider to facilitate work in Canada and travel into and out of Canada.

Also, there are some important deadlines and due dates noted, which require attention and timely action by employers and/or employees.

### Express Entry Profiles Will Expire in January 2016

Express Entry profiles are valid for **365 calendar days**. Applicants who created profiles in early 2015, but who have not yet received an Invitation to Apply ("ITA") for permanent residency ("PR"), should consider proactively withdrawing their current profile and creating a new one in order to avoid being excluded from the pool of candidates for any period of time. Consequently, the applicant is always in the pool and eligible for a draw. (For prior coverage of the Express Entry program, see [Flash International Executive Alert 2014-105](#), November 21, 2014.)

### Express Entry Draws of 2016

- IRCC held its first round of invitations of the year on January 6, 2016. 1,463 invitations were issued to applicants whose Express Entry ranked above the threshold level of **461** Comprehensive Ranking System (CRS) points.<sup>1</sup>
- The second round of invitations occurred on January 13, 2016 – 1,518 invitations were issued to those applicants with CRS points above **453**.<sup>2</sup>

## Ontario Immigration Nominee Program (“OINP”) – Express Entry Streams Are Successful

- The OINP has a current allocation of 2,700 nominations for Express Entry applicants. Since the fall of 2015, nomination certificates have been issued consistently to many candidates.<sup>3</sup>
- The OINP identifies and accesses candidates who meet the requirements of their programs via the online Express Entry pool of applicants.
- In 2015, the OINP Express Entry streams faced a number of technical issues that have been identified. The OINP has recommended that applicants who have not been contacted by the OINP consider re-submitting their profiles.

## OINP Introduces Two Business Immigration Categories

- 1 **Corporate Stream:** This stream is directed toward established international corporations looking to expand into Ontario, or to buy an existing business in the province. Up to five (5) “key staff” of the foreign corporation can be nominated by the OINP.<sup>4</sup>

In order to qualify, **foreign corporations** must:

- make an investment of a minimum of C\$5 million in a new or existing business;
- create five full-time, permanent positions for Canadian citizens or permanent resident per “key staff” (those seeking nomination) for a minimum period of 10 months.

Requirements for the **key staff** seeking nomination:

- Prospective nominees must be currently employed with the corporation, and have specific employment history with the corporation.
  - They must be [“essential to the establishment, continued operation and success of the business in Ontario”](#).
  - Each of the key staff must meet a minimum language requirement of Canadian Language Benchmark (CLB 5) level or equivalent.
  - Key staff must physically reside in Ontario for at least 75 percent of each year leading up to permanent residence.
  - Post-nomination monitoring will continue for 36 months after the attainment of permanent resident status.
- 2 **Entrepreneur Stream:** This stream is directed toward foreign entrepreneurs (owners, or senior managers) and can support the nomination of **up to two business partners**.<sup>5</sup> The minimum investment required is **C\$500,000** outside of the Greater Toronto Area (“GTA”) and for the ICT/Digital Communications Sector (anywhere in Ontario), or **C\$1 million** inside the GTA. Entrepreneurs and/or business partners are required to fund at least the minimum investment. External financing plans from recognized banks, or an institutional investor, can be relied upon to fund the investment beyond the minimum.

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Each entrepreneur and business partner has to have a [minimum amount of business experience](#), must hold a minimum of 33-percent equity in the business, and the investment must have the effect of creating at least two new jobs for Canadian permanent residents or citizens *per nominee*.

Applicants to the Entrepreneur Stream can submit an 'Expression of Interest' ("EOI") to the OINP, and are ranked based on a point system, which has five selection factors. The highest ranked applicants (out of a maximum 160 points) will receive an Invitation to Apply to be nominated under the Stream. Draws from the pool of interested applicants will occur in 120-day intervals.

In both categories, there are a number of investment opportunities that are excluded from consideration (e.g., existing franchises in the GTA). Each involve multi-step processes and the requirement to fulfill a *Performance Agreement*.

### **Ontario, British Columbia, and Alberta Provincial Nominee Programs ("PNP") Resume Intake of Applications**

The British Columbia PNP is expected to re-open both the Skills Immigration and Express Entry British Columbia categories in early 2016. It is anticipated that further information on program requirements will become available soon. British Columbia is expected to create a new points-based intake system to prioritize high-impact applicants and help occupations and skills to be aligned with British Columbia's labor market needs. (For prior coverage, see GMS [Flash Alert 2015-106](#), September 9, 2015.)

In October 2015, the British Columbia government introduced Bill 39, the *Provincial Immigration Programs Act*. If passed, this Act will introduce new inspection authority to assess applications or determine compliance with the Act. The *Ontario Immigration Act* was passed in May 2015; it is not yet known when it will become law, although this is expected shortly. The new Act will give the OINP broad powers of inspection to establish compliance by employers and applicants with statements made in support of applications.

As of **January 4, 2016**, the Ontario Immigrant Nominee Program has resumed intake of new paper-based applications, after the temporary pause in processing which began on November 16, 2015.

The Alberta PNP intake is due to start on **January 27, 2016**. The Alberta PNP paused its intake of applications in August 2015.

### **Quebec Update – The Quebec Skilled Worker Program Goes Online January 2016**

As of January 5, 2016, the application process for the Quebec Skilled Worker is online.<sup>6</sup> Applicants who are in Quebec as temporary residents, or who have a validated offer of employment in Quebec, can now apply. All other applicants may apply during the next intake period (January 18 - March 31, 2016). According to recent guidelines issued by Quebec's *Ministère de l'Immigration, de la Diversité et de l'Inclusion* (MIDI), candidates have until January 25, 2016, to create their account in the secure space "Mon projet Québec." After this date, it will not be possible to create a new account for the upcoming application intake period. Furthermore, between January 26 and February 15, 2016, candidates who have a Mon projet Québec account may access it to complete the application for a Quebec Selection Certificate/*certificat de selection du Québec* (CSQ).

## Canada's Entry Requirements Are Changing – March 15, 2016

Canadian Permanent Residents must carry and present their valid PR card or Permanent Resident Travel Document (PRTD) – as well as a valid passport – when entering Canada by commercial carrier.<sup>7</sup> As processing times can be in excess of five months for PR card renewals, employees may need to consider applying for a PRTD to facilitate travel. Starting on March 15, 2016, Electronic Travel Authorization (“eTA”) will be required for all visa-exempt non-U.S. nationals entering Canada as foreign nationals for work or other temporary purposes.<sup>8</sup> Applicants approved for Permanent Residence but have not yet activated their Confirmation of Permanent Residence, must obtain an eTA to allow entry after March 15, 2016, if they are not yet granted PR status by that time. (For prior coverage, see GMS [Flash Alert 2015-058](#), April 30, 2015.)

### KPMG Law Canada Note

#### *Trends and Observations Regarding Express Entry*

- Approximately 30,000 Invitations to Apply (ITA) were issued in 2015<sup>9</sup>; a significant portion of these went to applicants with Comprehensive Ranking System (“CRS”) Points that were lower than 600. Simply put – you can apply for PR without a Labour Market Impact Assessment-based work permit.
- Express Entry draws at the end of 2015 trended upwards<sup>10</sup> as the various Provincial Nominee Programs became more active issuing nomination certificates. These Express Entry-specific certificates give an applicant a bonus of 600 points, which increases their CRS Points in order to receive an Invitation to Apply.
- What we have observed is that successful applications have been submitted for applicants in a variety of occupations and a wide range of experience levels.
- Applicants on Post-Graduate Work Permits (PGWP) can also be competitive under Express Entry. Applicants with Canadian post-secondary degrees and at least one year of Canadian work experience are well suited for Express Entry.

#### *Things to Consider*

- It is expected that Express Entry will face a second ‘transition year’ as IRCC continues to work through its back-log of pre-2015 immigration applications. We do expect that the threshold of CRS points needed to receive an ITA under Express Entry will slowly start to decrease in 2016.
- We continue to encourage all Express Entry applicants to enhance their personal attributes/human capital factors wherever possible. This may include re-taking language exams to capture more CRS points, accumulating additional Canadian work experience, and obtaining Educational Credential Assessments for both the principal applicant and the spouse.
- The OINP Corporate Immigration Stream may offer an alternative to the Intra-Company Transferee (Start-Up) options available to foreign employers.
- The Ontario, British Columbia, and Alberta PNP programs tend to receive a high number of applications and may fill up quickly in 2016. We encourage applicants to apply early to avoid disappointment.

*Footnotes:*

- 1 See: <http://www.cic.gc.ca/english/department/mi/ita.asp> .
- 2 For further information, see: <http://www.cic.gc.ca/english/department/mi/> .
- 3 For further information, see: [http://www.ontarioimmigration.ca/en/pnp/OI\\_PNPABOUT.html](http://www.ontarioimmigration.ca/en/pnp/OI_PNPABOUT.html) .
- 4 For additional information, see: [http://www.ontarioimmigration.ca/en/pnp/OI\\_PNPCORPORATE.html](http://www.ontarioimmigration.ca/en/pnp/OI_PNPCORPORATE.html) .
- 5 For additional information, see:  
[http://www.ontarioimmigration.ca/en/pnp/OI\\_PNPENTREPRENEUR.html](http://www.ontarioimmigration.ca/en/pnp/OI_PNPENTREPRENEUR.html) . For a January 20, 2016 update, see: [http://www.ontarioimmigration.ca/en/pnp/OI\\_PNPNEW.html](http://www.ontarioimmigration.ca/en/pnp/OI_PNPNEW.html) .
- 6 For additional information, see: <http://www.canadavisa.com/quebec-skilled-worker-immigration.html> .
- 7 See: <http://www.cic.gc.ca/english/helpcentre/answer.asp?q=064&t=10> .
- 8 See: <http://www.cic.gc.ca/english/visit/eta.asp> .
- 9 See: <http://www.cic.gc.ca/english/department/mi/ita.asp> .
- 10 See: <http://www.cic.gc.ca/english/department/mi/ita.asp> .

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## **KPMG Law (Canada) Webinar: Canadian Permanent Residence – 2016 Forecast**

### ***Key Employer Strategies for 2016***

You are invited to a 45-minute webinar which will highlight the key developments in various Canadian Permanent Residence programs in 2016 as well as present key strategies for employers to take advantage of the new programs. This seminar will benefit Global Mobility, HR, Relocation and Legal Advisors, who are involved in the movement of foreign workers to Canada.

**Date:** January 26, 2016 | **Time:** 9:30a.m. – 10:15a.m. EST (GMT -5)

**Register/RSVP:** Click [here](#) to Register for Webinar/Conference details.

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