



GMS Flash Alert

Immigration Edition

2024-036 | February 6, 2024



Canada - Cap for International Student Applications; Digital Nomads Clarified

On January 22, 2024, Immigration, Refugees and Citizenship Canada (IRCC) announced that it will set an intake cap on international student applications for a period of two years.¹

IRCC also provided updates to Post-Graduation Work Permit (PGWP) eligibility for certain international students and open work-permit eligibility for spouses of international students.

The new temporary measures will be in place for two years, and the number of new study permit applications that will be accepted in 2025 will be re-assessed at the end of 2024.

IRCC also recently provided clarifications on the definition of a 'digital nomad.'

WHY THIS MATTERS

The recent announcement is the Canadian government's response to the rapid increases in the number of international students in Canada. Canada is hoping to alleviate pressures in the housing market, healthcare, and other services.

The intake cap is expected to result in approximately 360,000 approved study permits in 2024, a decrease of 35 percent from 2023.

Foreign students may see their opportunities for study and research in Canada diminished – as well as entry into Canada by their spouses more challenging – as a result of these measures; and employers may be confronted with a reduced 'pool' of foreign graduate talent for their workforce plans.

The clarity around digital nomads helps foreign national workers, their employers, and immigration counsel better understand what qualifies an individual to enter Canada as a Digital Nomad.

More Details

Provinces Will Issue Attestation Letters

IRCC will allocate a portion of the cap to each province and territory based on their respective population size. Each province or territory will then distribute the allocation among the Designated Learning Institutions within that region through the issuance of attestation letters. As of January 22, 2024, every study permit application submitted to IRCC will require an attestation letter from a province or territory. **The processing of study permit applications will be paused until March 31, 2024** – the deadline provided to provinces and territories to develop a process for issuing attestation letters.

Provinces and territories are expected to establish a process for issuing attestation letters to students by March 31, 2024. IRCC is expected to release additional details as more information becomes available from each province.

Applications submitted on or after January 22, 2024, without an attestation letter will be considered incomplete and returned, unless the applicant is exempt from this requirement. This means that unless a foreign national qualifies under one of the exceptions listed below, he/she must wait to submit the study permit application until the provinces and territories have established a process for issuing attestation letters.

Currently, Quebec is the only Canadian province that has a system in place as it issues Quebec Acceptance Certificates (CAQ) for foreign nationals seeking to study in Quebec.

Exceptions to Obtaining Attestation Letters

The new requirements largely apply to new applicants who are pursuing post-secondary studies. An international student will not require an attestation letter and may submit a study permit application if he/she is:

- a student applying to extend his/her study permit;
- a minor child applying to study in a primary or secondary school (Kindergarten to Grade 12); or
- a student applying for a Masters, PhD, or other post-graduate program.

Updates to Post-Graduation Work Permit (PGWP) & Open Spousal Work Permit Eligibility

Starting September 1, 2024, international students who begin a program of study that is part of a curriculum licensing arrangement will no longer qualify for a PGWP upon graduation. Under curriculum licensing agreements, students physically attend a private college that has been licensed to deliver the curriculum of an associated public college. IRCC has noted that these programs have less oversight than public colleges and act as a loophole for PGWP eligibility. IRCC has not yet identified the specific schools that will be impacted by this new measure.

Graduates of master's degree programs will soon be eligible to apply for a three-year PGWP. Under the current rules, the length of a post-graduation work permit is based solely on the length of an individual's program of study. This limits the amount of time a graduate student has to obtain Canadian work experience and potentially transition to permanent residence.

Open Work Permits for Spouses of International Students

IRCC also announced that in the coming weeks, open work permits will only be available to spouses of international students enrolled in master's and doctoral programs. The spouses of international students in other levels of study, including undergraduate and college programs, will no longer be eligible for an open work permit.

Additional Updates: Digital Nomads and Citizenship Eligibility

IRCC Defines 'Digital Nomad'

IRCC recently provided clarifications on the definition of a 'digital nomad'.² IRCC has defined digital nomad as a person who can perform his/her job remotely from anywhere in the world. A Digital Nomad only needs visitor status to relocate to Canada for up to six months at a time while he/she performs his/her job remotely for a foreign employer. There should be no nexus between his/her work and Canada – the person should not be serving or working with Canadian clients nor a local office in Canada.

A person may initially enter Canada as a Digital Nomad to work remotely, but he/she must seek a work permit if he/she needs to transfer to the Canadian entity. If an employer intends to transition the employee to its Canadian entity, a work permit will be needed before starting such a transition. Accompanying family members of Digital Nomads who intend to work or study in Canada should apply for a work permit or study permit.

Ruling for 'Lost Canadians'

On December 19, 2023, the Ontario Superior Court of Justice decided in a landmark ruling, *Bjorkquist et al. v. Attorney General of Canada*, that the "second-generation cut-off" rule in section 3(3)(a) of the *Citizenship Act* is unconstitutional.

The second-generation cut-off rule prohibits foreign-born Canadians who acquired citizenship by birth from passing their citizenship to their children if their children are also born abroad. In its recent decision, the Ontario Superior Court deemed this rule unconstitutional. Justice Akbarali, the judge, wrote that the rule creates a distinction based on national origin, as it treats Canadians who became Canadians at birth because they were born in Canada differently from those Canadians who obtained their citizenship by descent on their birth outside of Canada. The judge declared the provision to be of no force or effect, but suspended the declaration of invalidity for a period of six months to provide the federal government time to amend the Act.

The federal government has not yet identified how it will provide relief to second-generation individuals born abroad. As noted in Bill S-245, which was introduced before the *Bjorkquist* decision, the *Citizenship Act* may be amended to introduce the 'substantial connection' test for second-generation citizenship, which may require applicants to prove their physical presence in Canada for a certain period.

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Considerations for Employers and International Students

- Spouses of certain international students, including those with pending working applications and those seeking to apply for an initial work permit or extension, will need to monitor the new rules closely as IRCC is expected to provide further instructions. IRCC has not yet confirmed if the new rules will apply retroactively. Students with accompanying spouses who plan to extend their study permits may not be able to extend their spouse's status once the rules become effective.
- Employers that leverage the skills of international students are expected to face a significant reduction in the pool of available foreign students to support their workforce. This reduction is especially pertinent for positions that are traditionally filled by foreign students. As such, employers may need to re-assess their workforce strategies and explore alternative talent pipelines.
- Given that Ontario is a prominent hub for international students, the province is expected to experience a substantial decrease in the number of international students.

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- Additional documentation is not required of persons entering to be digital nomads (although they must still satisfy the officer that they will leave Canada at the end of their authorized stay). Foreign nationals seeking to work as digital nomads in Canada should carry proof of employment with their foreign employer, confirmation that the role can be performed remotely, and copies of recent bank statements to demonstrate that they can financially support themselves during their stay in Canada.

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Immigration legislation and practices continue to change frequently. Individuals who have questions or concerns about the new measures are encouraged to contact their usual immigration counsel or KPMG Law LLP (see the Contacts section) for further guidance.

FOOTNOTES:

1 IRCC, "[Canada to stabilize growth and decrease number of new international student permits issued to approximately 360,000 for 2024.](#)"

2 IRCC, "[Temporary residents: Digital nomads.](#)"

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Contact us

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