

# ImmQuest

"Qui bene interrogat bene docet" "He who questions well teaches well"

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## **New Ministerial Instructions for Federal Skilled Workers: Clearing the Backlog or Closing the Door?**

Brenda Wong

It is agreed that the Federal Skilled Worker Application process needs to be fixed. Skilled Workers make up two thirds of the current backlog of over 900,000 people around the world who are

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## **Applying for Permanent Residence Under the Canadian Experience Class**

Edward C. Corrigan, B.A., M.A., LL.B.

On September 5, 2008, the Honourable Diane Finley, Minister of Citizenship and Immigration, announced that certain temporary foreign workers and students can apply for permanent residence

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Please send your questions to *ImmQuest* care of Mario D. Bellissimo at [mdb@obr-immigration.com](mailto:mdb@obr-immigration.com). If you have any questions you would like asked of either Citizenship and Immigration Canada or the Canada Border Services Agency send it along and we will ask on your behalf.

Fairness and common sense dictate that future significant changes with respect to immigration processing, particularly of Skilled Worker applications which form the majority of applications made to Canada, be made after a more consultative and transparent process. Adequate notice of changes must also be given so that applicants know what the applicable rules are at the time of application. Otherwise, in a few years, instead of worrying about a backlog, the government may very well have to worry about how to get applicants to line up once again to come to Canada.

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## Applying for Permanent Residence Under the Canadian Experience Class

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under the newly created Canadian Experience Class (CEC) starting September 17, 2008.

The Canadian Experience Class is a new program of immigration for qualified temporary foreign workers and foreign student graduates with professional, managerial and skilled work experience in Canada. 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 final implementation of the Canadian Experience Class with minor modifications reflects what was originally proposed on August 9, 2008. The main change is that those who have left Canada, but otherwise meet the requirements as workers or graduates, will be eligible to apply provided they do so within one year of leaving their employment in Canada. Under the previous proposal, Citizenship and Immigration Canada (CIC) had sug-

gested that applicants would be required to have temporary resident status and be present in Canada to be eligible to apply. The Government chose to modify the policy to avoid missing potential qualified applicants with Canadian experience by requiring a residency requirement.

The final regulations for the Canadian Experience Class were published in the *Canada Gazette*, Vol. 142, No. 19, September 17, 2008.

### WHO CAN APPLY?

To apply for permanent residence under the Canadian Experience Class the minimum requirements are as follows:

- plan to live outside the province of Quebec. Quebec selects its own immigrants. Applicants who plan to live in Quebec must apply to be selected at the Ministère de l'Immigration et des Communautés culturelles du Québec. [www.immigration-quebec.gouv.qc.ca/en/index.asp](http://www.immigration-quebec.gouv.qc.ca/en/index.asp).
- be either:
  - a temporary foreign worker with at least two years of full-time (or equivalent) skilled work experience in Canada, or
  - a foreign graduate from a Canadian post-secondary institution with at least one year of full-time (or equivalent) skilled work experience in Canada
- have gained their experience in Canada with the proper work or study authorization
- apply while working in Canada – or – within one year of leaving your job in Canada

Ministerial Instructions issued on November 28, 2008, and made retroactive to February 27, 2008, limited Skilled Worker Immigration to 38 distinct occupations. The Canadian Experience Class was exempted from this set of restrictions.

### TWO STREAMS FOR CANADIAN EXPERIENCE CLASS

#### Temporary Foreign Worker Stream:

Under this category an applicant must have two years of full-time equivalent, skilled-work experience at the NOC O, A or B level. (i.e. managerial, professional, or skilled and technical) acquired

in Canada within the three years preceding the date the application is submitted in a complete form.

Full-time work experience means working at least 37.5 paid hours per week or 1,950 hours of paid employment in one year. This two years work experience can be acquired over a three-year period.

Lower-skilled workers cannot apply under the Canadian Experience Class. However, Provincial Nominee Programs may be available to lower-skilled workers. These are workers in jobs classified at skill levels C and D under the National Occupational Classification (NOC) System.

Work experience gained in Canada while waiting for a decision on a refugee claim is not eligible for an application for permanent residence under the Canadian Experience Class.

#### Post-Graduation Stream:

Requirements for graduates from a qualified Canadian educational institution.

There are two requirements specific to graduates:

- Work experience
- Education

## WORK EXPERIENCE

As a graduate of a Canadian post-secondary educational institution, applicants must have one year of full-time (or equivalent) work experience in Canada after graduation. The work experience must be gained within two years of applying under the CEC program.

Co-op terms and apprenticeships completed before graduating do not count as skilled work experience as they are considered part of an educational program. Co-op terms and apprenticeships are counted as part of the minimum two-year educational program requirement.

Applicants can get qualified work experience by applying for the Post-Graduation Work Permit after graduation. Under this program Work Permits may be valid for up to three years with no restrictions on the type of work performed. However, to qualify under the Canadian Experience Class for permanent residence, at least one year of work experience under the permit must be at Skill Type 0, or Skill Level A or B under the National Occupation

Classification or (NOC). The work experience must be gained within two years of the time the application is made.

Full-time work experience means working at least 37.5 paid hours per week or 1,950 hours of paid employment in one year. Only work experience gained after graduation qualifies. Work experience gained during your studies does not count toward meeting the requirements for work experience.

## SKILL LEVEL – NATIONAL OCCUPATIONAL CLASSIFICATION

Qualifying work experience must be Skill Type 0, or Skill Level A or B on the NOC system.

The NOC is a classification system for jobs in the Canadian economy. It describes duties, skills, talents and work settings for occupations in Canada. It is used by Canada Immigration to classify job categories. The NOC 2006 can be accessed on-line at: <http://www5.hrsdc.gc.ca/NOC-CNP/app/index.aspx?lc=e>.

Work experience that does not qualify for the Canadian Experience Class includes:

- work experience without the proper authorization (for example, as an undocumented worker)
- work experience in Canada that is not classified as 0, A or B under the NOC list and is not considered skilled work experience.
- must have a least one year of work experience as a graduate of a Canadian post-secondary educational institution.

Applicants not meeting the minimum work experience requirements for permanent residence under the Canadian Experience Class will be rejected.

## EDUCATION

Education is only assessed if you are applying as a graduate of a Canadian post-secondary educational institution under the Post-Graduation stream.

To qualify the applicant must be either:

- a full-time Canadian post-secondary educational program of at least two years or
- a one-year Master's program (certificates and diplomas cannot be counted) and an additional year of education,

obtained in Canada, before admission into the one-year program (for a total of two years).

English or French as a second-language courses do not count toward education requirements under the Canadian Experience Class.

The qualifying academic programs must be delivered by a private or public post-secondary educational institution such as a college or a university that is provincially recognized. Private CEGEPs in Quebec who receive 50 per cent of their funding from the government also qualify.

A degree from a Canadian provincially recognized private post-secondary institution also qualifies.

Applicants must have proper legal status in Canada during any period of full-time study or training.

Failure to meet the minimum education requirements when applying as a graduate the application for permanent residence under the Canadian Experience Class will be refused.

The applicant must have been a considered "full-time" student at the academic institution. This normally means eight months of full time study.

Applicants are required to have two years of study. At least 16 months – or four semesters – within the 24 months before completing a full-time post-secondary program of study in Canada.

Applicants also must complete a required program of study in Canada and obtain a Canadian educational credential (e.g. a degree, diploma or certificate).

#### **Excluded Studies:**

Education that does not qualify for the Canadian Experience Class includes:

- Any full-time program or training where the study of English or French as a Second Language amounts to more than half of the program [R87.1(3)9e]
- Distance learning, including on-line programs completed outside Canada does not qualify.
- Studies in Canada taken under an award which stipulate return to their home country to apply their knowledge and skills [R87.1(3)(f)].

These programs include all awards from the Canadian International Development Agency (CIDA), the following awards from the Department of Foreign Affairs and International Trade (DFAIT); Canadian Commonwealth Scholarship Program-Student Exchange Program (only); Government of Canada Awards Program-Student Exchange program (only); Canada-China Scholars Exchange program; Equal Opportunities Scholarship Program, Canada-Chile; and Organization of American States Fellowship Programs.

#### **Language Requirements:**

All applicants are required to be able to communicate and work in one or both of Canada's official languages.

Applicants must prove their ability in English or French to qualify for permanent residence under the Canadian Experience Class.

The occupation category will determine the language abilities required to immigrate under the Canadian Experience Class. The requirements vary according to job classification under the National Occupation Classification system (NOC).

Applicants that do not meet the minimum language skill requirement for their NOC category will be refused.

### **PROOF OF LANGUAGE ABILITY**

Applicants who have some abilities in both English and French must decide which of the two is their first official language. The other is their second official language.

Applicants must prove their abilities in their first official language only. There are three ways to prove language ability:

1. take an IELTS test to prove language ability in English or
2. take the TEF to prove language ability in French.

(At the present time only IELTS and TEF are the only "designated language testing agencies." CIC uses IELTS and TEF scores to determine the level on the Canadian Language Benchmarks.)

3. provide other written evidence of applicant abilities.

If the applicant's first language is neither French nor English, CIC strongly recommends taking either the IELTS test or the TEF before starting the application process. This will help prospective

applicants determine if they meet the minimum language requirements for their employment category.

Language Instruction for Newcomers to Canada (LINC) is not a designated testing agency for applicants under the Canadian Experience Class.

Depending on the employment category written proof and explanation must clearly show that the applicant meets the benchmark criteria listed for either Canadian Language. NOC Classifications O (Management Occupations) and A (Professional Occupations) requires language Benchmarks of 7. However, NOC classification B (Technical, Paraprofessional and Skilled Occupations) requires only a language bench mark of 5. There is a little flexibility in the evaluation of the language ability. If one fails to achieve the required score in one language skill category they can still qualify provided that their overall average meets the required standard.

Under the Canadian Experience Class in NOC category B (Technical, Paraprofessional and Skilled Occupations) the language standard of 5 is lower than the requirement for a skilled worker. A language skill of level of 7 is required for applicants who apply under the Skilled Worker program.

Citizenship and Immigration Canada (CIC) officers will not conduct an interview to assess your language abilities. CIC will only use test results from organizations approved by CIC or written proof in assessing language.

All applicants for permanent residence in economic categories must go through medical screening for the reason above in addition to verifying that neither they nor a family member would pose an excessive demand on Canada's health, education and social systems.

#### The Application Process:

All applicants must complete the following forms:

- Application for Permanent Residence in Canada [IMM 0008]
- Schedule 1: Background/Declaration [IMM 0008 SCHEDULE 1]
- Schedule 8: Economic Classes – Canadian Experience Class [IMM 0008 SCHEDULE 8]

- Additional Family Information [IMM 5406]
- Document Checklist [IMM 5610] This is a special Check List for Canada Experience Class Applications.
- Use of a Representative [IMM 5476] if represented by a third party.

If any of the required documents are missing, or photocopies are not clear, the application will be returned.

Applicants must pay the Standard CIC Fees. The current CIC Application fee for those over age 22 is \$550. For dependents under the age of 22 the fee is \$150.00.

CIC will send a request to pay the Right of Permanent Residence Fee when they are ready to issue the permanent resident visa. The Right of Permanent Residence Fee is \$490 per person for the principal applicant and their spouse or common-law partner (if applicable). Dependent children are exempt from this fee.

All fees must be paid before the application for permanent residence can be finalized. At the present time Buffalo Visa Office processes all Canadian Experience Class Applications. The address for Buffalo CIC is:

Consulate General of Canada  
Immigration Regional Program Centre  
3000 HSBC Center  
Buffalo, New York  
14203-2884, U.S.A.

Immigration fax: (716) 852-2477

E-mail: buffalo-im-enquiry@international.gc.ca

If the applicant has left Canada, they will have to apply at the Canadian Visa Office that serves their area. Application must be filed within one year of leaving Canada. The file will then be transferred to the CIC Office in Buffalo for processing.

If the application package does not meet all of the requirements, it will be returned to the applicant. No file will be created or record kept until a complete application has been submitted. An acknowledgment of receipt will be sent once the application is complete and a letter sent which provides the visa office file number and contact information and procedures.

Lock-in occurs only when a properly completed application has been submitted (see OP 1, Section 5.24), whether it is submitted

in Buffalo or at another visa office. The lock in date is important if there are any dependents over the age of 22 and they are not attending full time studies.

The completed application will undergo a detailed review by a Visa Officer. The Officer will consider all the information and documentation provided and will assess it against current selection standards.

Unlike many other Canada Immigration programs there is no residency requirement for landing. If the applicant has temporary resident status when their application is approved, they can be landed in Canada at their local Citizenship and Immigration Canada Office. If the applicant is approved while outside of Canada they will present their visa at a Port of Entry and get landed through that office.

For more detailed information on the requirements of Canadian Experience Class please consult *Overseas Processing Manual OP 25*, the amended *Immigration and Refugee Protection Regulations [R87.1]* and *CIC Operational Bulletin 077-September 19, 2008*.

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## Case Tracker: Cases You Should Know!

Mario D. Bellissimo

### Citizenship

**Case:** *Oberlander v. Canada (Attorney General)*

**Decider:** Honourable Mr. Justice Phelan

**Court:** FC

**Citation:** 2008 CarswellNat 3847, 2008 FC 1200

**Judgment:** October 27, 2008

**Docket:** T-1158-07

[82] With respect, the age of Oberlander and his spouse is clearly wrapped into the consideration of the length of time of his irre-

proachable life in Canada of 51 years. The existence of a mentally ill daughter and the impacts on his family are matters more appropriate to consideration on deportation and may well form the basis for some deferral or permanent stay in Canada – an issue not relevant to this consideration as discussed in paragraph 34 above.

[83] As to the allegation that Canada has shown so little action against Oberlander for 25 years, while it may be truly troubling, both from a public perspective as well as from the perspective of Oberlander's own interest, there is no statute of limitations on war crimes or on citizenship revocation. Any lapses by the Government would not, in and of itself, give rise to a right to retain a citizenship which was otherwise falsely obtained.

[90] The Applicant contends that the Court ought to exercise its discretion to grant judicial review. To the extent that there is a residual discretion in this Court to grant judicial review (a proposition which I doubt, given my findings that the Cabinet's decision is reasonable and legally sustainable), I would not be prepared to exercise that discretion. What is at issue here is whether a person who hid his involvement in a Nazi death squad and therefore gained the benefits of Canadian citizenship on which he launched a productive life, should be deprived of his ill-gotten citizenship. While Oberlander's personal circumstances may be personally compelling, and the factors of time and good works are on his side; the importance of preserving the integrity of Canadian citizenship from deceit and a recognition of Canada's obligation to ensure that there is no safe haven for those involved in horrendous historical events inclines me to reject any exercise of discretion to grant a judicial review in this instance.

### Mandamus (sponsorship)

**Case:** *Subaharan v. Canada (Minister of Citizenship & Immigration)*

**Decider:** Madam Justice Dawson

**Court:** FC

**Citation:** 2008 CarswellNat 4073, 2008 FC 1228

**Judgment:** November 4, 2008

**Docket:** IMM-1607-08

[15] The delay, to date, of over 21/2 years since the Immigration Appeal Division allowed the appeal, is far in excess of normal processing times. For a great period of that time (from November